TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. 85.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, AND JOHN W. NELMS, SHERIFF OF FULTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED AUGUST 14, 1907.

(20,345.)

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SUPREME COURT OF THE UNITED STATES.

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vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA, AND JOHN W. NELMS, SHERIFF OF FULTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the nighest Court of law or equity of the said State in which a decision could be had in the said suit between the Central of Georgia Railway Company, plaintiff in error, and William A. Wright, Comprtoller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Defendants in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause
2 further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 1st day of August in the year of our Lord One thousand nine hundred and six.

[Seal U. S. Circuit Court, N. D. Georgia.]

C. FULLER,
Clerk United States Circuit Court
for the Northern District of Georgia.

Allowed by
WM. H. FISH,
Chief Justice of the Supreme Court of Georgia.

August 1, 1906.

Filed in office August 1, 1906.
LOGAN BLECKLEY, *D. C. S. C., Ga.*
1—380

3 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

This first day of August, 1906, came the Plaintiff in Error Central of Georgia Railway Company, by its Attorneys and filed herein and presented to this Court its petition praying for the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Georgia intended to be urged by it; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration hereof, this Court, being the Court rendering the judgment or passing the decree complained of, and the undersigned as Chief Justice of said Court, does hereby allow the Writ of Error upon the Plaintiff giving bond, according to law, in the sum of $500.

In witness whereof this order allowing said Writ of Error is signed by William H. Fish, Chief Justice of the said Supreme Court of the State of Georgia this first day of August in the year of our Lord 1906.

WM. H. FISH,
Chief Justice of Georgia.

Filed in office August 1, 1906.
LOGAN BLECKLEY, *D. C. S. C., Ga.*

4 UNITED STATES OF AMERICA, *ss:*

To William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, Georgia, Greeting:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of Georgia, wherein the Central of Georgia Railway Company is Plaintiff in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Fish, Chief Justice of the Supreme Court of Georgia, this 1st day of August, in the year of our Lord One thousand Nine hundred and Six.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

Service acknowledged of a copy of the within citation this 1st day of August, 1906.

JOHN C. HART,
Att'y for Def'ts in Error.

Filed in office August 1, 1906.

LOGAN BLECKLEY, *D. C. S. C., Ga.*

5 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Georgia.

The petition of the Central of Georgia Railway Company, by T. M. Cunningham, Jr., and Alex C. King, its attorneys, shows:

That on the 24th day of May, 1906, the Supreme Court of the State of Georgia made and entered a final judgment herein in favor of the Defendants, William A. Wright, Comptroller General, and John W. Nelms, Sheriff of Fulton County, and against the Central of Georgia Railway Company in which judgment, and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of this petitioner, the Central of Georgia Railway Company, all of which more in detail appear from the Assignment of Errors, which is filed with this petition.

The Central of Georgia Railway Company further shows that in this suit there was drawn in question the validity of a statute of, or authority exercised under, the Statute of Georgia, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; and

6 in said suit the said Central of Georgia Railway Company specially set up and claimed a title, right, privilege and immunity under the Constitution of the United States, and the decision was against the title, right, privilege and immunity specially set up and claimed under such Constitution, and that therein a manifest error hath happened to the prejudice of the Central of Georgia Railway Company.

Petitioner further shows that the said Supreme Court of the State of Georgia is the highest Court of the said State of Georgia in which a decision in this suit and in this matter could be had.

Wherefore, the Central of Georgia Railway Company prays that a Writ of Error may issue in this behalf from the Supreme Court of the United States to the Supreme Court of the State of Georgia for the correction of the errors so complained of, and that a transcript

of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

This August 1st, 1907.

T. M. CUNNINGHAM, JR.,
ALEX. C. KING,
Attorneys for Petitioner.

Filed in office Aug. 1, 1906.
LOGAN BLECKLEY, *D. C. S. C., Ga.*

7 Supreme Court of the United States.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Error from the Supreme Court of Georgia.

Know all men by these presents: That Central of Georgia Railway Company as principal, and the American Surety Company of New York as security, are held and firmly bound unto the said William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Defendants in Error, in the sum of Five Hundred Dollars, to be paid to the said William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County: For which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our successors and assigns firmly by these presents.

Sealed with our seals, and dated this first day of August, 1906.

Whereas, the above named Central of Georgia Railway Company has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of Georgia:

Now, Therefore, the condition of this obligation is such that if the above-named Central of Georgia Railway Company shall prosecute the said Writ of Error to effect, and answer all costs should it fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By A. R. LAWTON, *Its First Vice President.*

8 Attest:
[SEAL.] GEO. H. RICHTER,
Assistant Secretary.

AMERICAN SURETY COMPANY OF NEW YORK,
By JOS. T. ORME, *R. V. Pt.*

Attest:
[SEAL.] A. J. ORME, *R. A. S.*

Signed, sealed and delivered in presence of us, as to Central of Georgia Ry. Co.:

[SEAL.] WM. M. FARR,
Notary Public, Chatham County, Ga.

Signed, sealed and delivered in presence of us, as to American Surety Co. of New York:

[SEAL.] W. G. LEAS,
Notary Public, Fulton County, Ga.

Approved this 1st day of August, 1906.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office Aug. 1, 1906.
LOGAN BECKLEY,
D. C. S. C. Ga.

9 In the Supreme Court of the State of Georgia, March Term, 1906. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General of Georgia, and JOHN W. NELMS, Sheriff of Fulton County, Defendants in Error.

Assignment of Errors.

The Central of Georgia Railway Company, in connection with its petition in the above stated cause for a Writ of Error, makes the following assignment of errors which it avers occurred upon the trial of the cause and in the judgment of the Supreme Court of Georgia.

The plaintiff in Error, Central of Georgia Railway Company, assigning error, says:

That in the record and proceedings in the aforesaid cause, and in the judgment of the Supreme Court of Georgia, there is manifest error in this:

First. That the Supreme Court of Georgia erred in affirming the judgment of the Court below, to wit, the Superior Court of Fulton County, Georgia, in which a judgment and decree was entered for the Defendants against this Plaintiff, because said judgment and decree denies the Plaintiff the equal protection of the laws and takes its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Second. That the Supreme Court of Georgia erred in affirming the judgment of the Court below in refusing to grant a new trial to this plaintiff, and overruling the motion of this plaintiff for a
10 new trial, because said judgment denies to the plaintiff the equal protection of the laws and takes its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Third. That the Supreme Court of Georgia erred in affirming the judgment and decree in this cause decreeing that the tax executions sought to be enjoined should proceed, the error being that each and every execution in favor of the State against the Central of Georgia Railway Company for the years 1897 and 1905 inclusive should have been perpetually enjoined by said decree as prayed by the Central of Georgia Railway Company, because said executions issued without due process of law, and take plaintiff's property without due process of law and deny to it the equal protection of the law contrary to the Fourteenth Amendment of the Constitution of the United States.

Fourth. Because the Supreme Court of Georgia erred in not adjudging that the said Superior Court of Fulton County should have decreed that the said executions were void because based on assessments which had been made without due process of law contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Because the Supreme Court of Georgia erred in affirming the said judgment and decree of the Court below, for that said decree was contrary to law because there was, on several dates of said assessments, no law or statute of force in the State of Georgia which afforded petitioner due process of law required by the Fourteenth Amendment to the Constitution of the United States in the assessment of back taxes on property omitted from prior returns, and that each of said assessments for taxes against the petitioner on Western Railway of Alabama stock are null and void because issued without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

Sixth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because there is no law or statute of force in the State of Georgia
11 which before or after the making of the said assessments or at the time of making the assessments afforded petitioner the right or opportunity to be heard as to its liability to said tax, or as to the valuation of the said stock, and that the assessments thus made by the Comptroller-General seek to deprive petitioner of its property without due process of law, contrary to the fourteenth Amendment to the Constitution of the United States, and the Court erred in decreeing that such executions on said assessments should proceed.

Seventh. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because the law of the State of Georgia, as contained in sections 812, 813, 814, 847, 855, 874, 879, 949 of volume 1 of the Code of Georgia of 1895, and the Acts of 1813, 1861, and 1804 in so far as they purport to authorize the assessment and valuation for taxation of property omitted from returns in prior years, is unconstitutional, null and void and contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that the said sections of said Code and the Acts of the General Assembly of the State of Georgia fail to afford the taxpayer an opportunity to be heard on the

question of the value of property omitted from the tax returns of prior years.

Eighth. That the judgment of said Supreme Court in affirming said judgment and decree of said Superior Court was error because the assessment of back taxes on property omitted from the return of a prior year is an act judicial in its nature, and the tax payer is entitled to due process of law in the assessment of such back taxes, with notice of the time and place of making such assessment, and the right and opportunity to be heard on the value of said property. Plaintiff alleges that the assessments involved in this case were each made without due process of law, and are void because made in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Ninth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this,
12 because plaintiff alleges it appears from the record in said case that for the years 1897 to 1905, petitioner in good faith made its tax returns for each of said years; that the stock of the Western Railway of Alabama was not omitted from said returns or either of them with intent to conceal petitioner's interest in said property, or to escape taxation thereon, but that said stock was omitted in the honest belief and in reliance upon the universal practice of the taxing department of the State of Georgia that the same was not taxable; that said bona fide return was duly accepted by the Comptroller General and for the said Comptroller without process of law and without the right or opportunity to petitioner to be heard and to offer evidence as to the value of said stock for each of said years, to issue assessments for each of the years from 1897 to 1905, and to back tax petitioner on said stock without the right to be heard on the question of the valuation thereof is to deprive petitioner of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and the Court erred in not enjoining said executions.

Tenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because there is no law of force which affords petitioner the right or opportunity to be heard on the assessment of back taxes on omitted property; that by the universal practice foreign stock was treated as nontaxable, and that a new construction of the law, and a new practice of the taxing department should not be given retroactive effect, but should be prospective only, and that the assessment of taxes on said foreign stock for the years when the same was not treated or regarded as taxable without affording petitioner the right and opportunity to be heard is unreasonable, arbitrary and unjust and, takes from petitioner its property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Eleventh. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in
13 this, because on the evidence in said case to be found in the approved brief of evidence made a part of the record in this

case and here referred to, plaintiff says that said assessments were issued without process of law, without a hearing, and without the opportunity to petitioner to be heard on the question of value of said stock, and without notice of the time and place when said assessments would be made, and the assessments and each of them are void because issued without due process of law, because petitioner was not given a day in court or an opportunity to be heard as to the value of the Western Railway of Alabama stock, and that said void assessments are sought to be used to deprive petitioner of its property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, and the Court erred in not adjudging that the assessment should be cancelled and the executions issued thereon perpetually enjoined.

Twelfth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff in error insists that the pleadings and the admissions of the defendants show that the holder of no foreign stock has been taxed in Georgia except petitioner and the Georgia Railroad & Banking Company, who together own the stock of the Western Railway of Alabama; that the taxation of plaintiff in error on foreign stock for years 1897 to 1905, and the failure to tax the holder of any other foreign stock for the same period is harmful discrimination against the petitioner in the administration of the law, and denies to petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Thirteenth. That the judgment of said Supreme Court affirming the said judgment and decree of said Superior Court was error because plaintiff in error insists that the record shows that all other property in the State is returned by the tax payer at two-thirds of its market value, and that such returns on such two-thirds valuation is habitually, knowingly and intentionally accepted by the taxing officers and that where assessments are made by the Comp-
14 troller General or State Boards of Arbitration he and they habitually, knowingly and intentionally assessed such property for taxation at approximately two-thirds of its market value, while the said Comptroller General having assessed petitioner's stock at the full capitalization value, made no reduction to equalize such valuation and assessment with the other property in the State, and that in assessing petitioner's stock without making a reduction allowed on other property the Comptroller General discriminated against petitioner to its injury and that such action on the part of the Comptroller and the assessment consequent thereon denied to the petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fourteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because plaintiff insists that the record in said case shows the other property in the State of Georgia is not assessed beyond its market value, while the stock of petitioner in the Western Railway of Alabama was assessed by the Comptroller and taxed by your petitioner

at at least seventy-five per cent., above its market value, whereby petitioner was denied the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff insists it appears from the record that the other property in the State is habitually, knowingly and intentionally accepted and assessed by taking officers of the State at at least one-third below its fair market value, while the shares of petitioner in the Western Railway of Alabama were assessed and taxed by the Comptroller General for each of the years at least seventy five per cent. above its market value, whereby petitioner was denied the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

15 Sixteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error because plaintiff insists that it appears from the record that the Comptroller General in valuing and assessing railroad property for taxation adopted the method of capitalizing net earnings at six per cent. and of deducting therefrom approximately one-third of the value thus found for the purpose of taxation, also, that while the Comptroller adopted the method of capitalizing the net earnings of the Western Railway of Alabama for each and all of the years at six per cent. for the purpose of determining the value of the Western Railway of Alabama, and deducted the bonded indebtedness for the purpose of finding the value of the stock, yet after finding the value of the stock by such method the Comptroller General made no deduction of one-third, or any other sum, from the valuation thus found; but assessed said stock for taxation at said valuation thus found without any deduction whatever; that in so doing, the Comptroller knowingly and intentionally discriminated against petitioner, and, in the administration of the laws denied the petitioner the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Seventeenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error, because plaintiff insists from the evidence in the case, that the Central of Georgia Railway Company is not the owner of the 15,000 shares of stock in the Western Railway of Alabama which are sought to be taxed against it by the assessments and executions sought to be enjoined by this petition, and the amendments thereto, but that the same is the property of the Central Trust Company of New York, and has been during all the years involved in this litigation. That the taxation of said property by the said State of Georgia for the said years is an attempt to tax property the situs of which is outside of the State of Georgia, and said taxation is, therefore, in violation of the Constitution of the United States

and of the Fourteenth Amendment thereof, in that it at-
16 tempts to deprive petitioner of its property without due process of law, and deny to it the equal protection of the laws.

Eighteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, because plaintiff insists under the evidence in said case that the only interest which petitioner has in said shares of stock is an equitable, reversionary interest subject to the legal title and possession of the Central Trust Company of New York and the equitable interest of the bondholders who are the *cestuis que trustent* of said Central Trust Company of New York, and that the attempt to collect from this petitioner out of its property taxes upon the value of said shares of stock, as an entity, is an attempt to take the property of your petitioner, without due process of law, and is a denial to it of the equal protection of the laws, contrary to the Constitution of the United States and of the Fourteenth Amendment thereof.

Nineteenth. That the judgment of said Supreme Court affirming said judgment and decree of said Superior Court was error in this, that the assessments of the said shares for taxation against this petitioner is an effort on the part of the taxing officers of the State of Georgia to tax it on property in which it owns only an equitable reversionary interest, as above stated, and that there is nothing in the laws or Constitution of the State of Georgia, which provides for such taxation, and the attempt to assess it is an effort to deprive petitioner of its property without due process of law and deny to it the equal protection of the laws, contrary to the Constitution of the United States and of the Fourteenth Amendment thereof.

Twentieth. That the judgment of the said Supreme Court affirming said judgment and decree of said Superior Court was error in this, that the said Supreme Court of Georgia having decided that the decision of said Supreme Court rendered in the case of Wright,
Comptroller General *vs.* the Southwestern Railroad, reported
17 in 64th Georgia, pages 783, 799, was the law of this State and was not altered by the adoption of the Constitution of 1877 and was binding upon said Supreme Court as the unanimous decision of the said Court until reversed by a full bench, and said decision fixing the situs of shares of stock in foreign railroad companies for purposes of taxation as without the State of Georgia upon the ground that the same were but representatives of the physical properties of said foreign corporations located outside of said State, it was not competent for the Legislature of Georgia by a legislative enactment to undertake to fix the situs of the said shares of stock or to tax the same, and such attempt at taxation was a taxation of property beyond the limits of the State of Georgia and was contrary to the Constitution of the United States and to the Fourteenth Amendment thereof, and was the taking of property without due process of law.

Wherefore, the said Central of Georgia Railway Company, Plaintiff in Error herein, prays that the judgment of the Supreme Court of the State of Georgia in favor of the Defendants, William A. Wright, Comptroller General of Georgia, and John W. Nelms, Sheriff of Fulton County, Georgia, and against this Plaintiff, the Central of Georgia Railway Company, may be reversed.

T. M. CUNNINGHAM, JR.,
ALEX. C. KING,
Attorneys for Petitioner.

Filed in office Aug. 1, 1906.
LOGAN BLECKLEY, *D. C. S. C., Ga.*

18 46 Atlanta, Mch. Term, '06.

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WRIGHT, Comptroller-general, ET AL.

By the COURT:

I. This case is controlled by the decision in Central of Georgia Railway Company *v.* Wright, 124 Ga. 630; Georgia Railroad & Banking Co. *v.* Wright, 124 Ga. 596; and Georgia Railroad & Banking Co. *v.* Wright, this day decided.

* * * * * * *

COBB, *P. J.:*

This case was argued with the case of the Georgia Railroad and Banking Co. *v.* Wright, this day decided, and is controlled by the ruling made in that case, as to many of the points involved. In so far as the other questions raised are concerned, it is controlled by the decisions in Central of Ga. Ry. Co. *v.* Wright, 124 Ga. 630, and Ga. Railroad & Banking Co. *v.* Wright, Id. 596. There was in this case a contention similar to that made in the case first referred to, that the assessments made by the comptroller-general for certain years were premature, on the ground that during that
19 time that the plaintiff was allowed by law to make a return for taxes, both the comptroller-general and the plaintiff were enjoined by an order of the United States Circuit Court for the Northern District of Georgia, the latter from making any return and the former from receiving any return. The Central Trust Company of New York filed a bill in equity in the United States Court, praying for an injunction of the character above referred to, and on December 22, 1902, an injunction was granted. This injunction was finally dissolved on February 10, 1905, and the bill was dismissed without prejudice. During the time that this bill was pending, the time allowed by law for making returns for the years 1903 and 1904 expired. Restoring the status as it existed at the time that the injunction was granted, the plaintiff would have had, under the law, from January 1 to May 1 in each year,

that is a period of four months, to make returns for taxation. If the plaintiff had made a return within this time, after February 10, 1905, it would not have been a defaulter. But not having made such a return in this time, it was, after the lapse of this time, a defaulter and subject to be proceeded against as such. Hence the assessment made by the comptroller-general on January 23, 1906, was not premature. It is said, though, that immediately after the dismissal of the bill in the United States Circuit Court on February 10, 1905, an injunction was granted by the judge of the superior court of Fulton county, enjoining the comptroller-general from proceeding to collect taxes on the stock in question, and that the plaintiff should not be considered a defaulter on account of the time that elapsed while this injunction was pending. This injunction was finally dissolved, on January 22, 1906. The claim is that the plaintiff would not be a defaulter until the lapse of the time allowed in each year for a return had expired, after the date just mentioned. It has been held that this injunction was wrongfully granted. It was granted at the instance of the plaintiff. The plaintiff can not claim now the right to make a return after the time allowed by law, when its failure to make a return was due to its own act, and when the inability of the tax officer to receive the return resulted from the proceeding instituted by it, which was finally held to have been unauthorized under the law. A taxpayer can not wrongfully tie the hands of the tax officers and claim benefits as a result therefrom. If a taxpayer fails to make a return in the time required by law, he is a defaulter. If he wrongfully prevents the tax officer from receiving his return within such time, it does not lie in his mouth to say that the period elapsing during the time that the tax officer is wrongfully restrained at his instance can not be counted against him.

Judgment affirmed. All the Justices concur.

Supreme Court of the State of Georgia.

ATLANTA, GA., *May* 24, 1906.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

CENTRAL OF GEORGIA RY. CO.
versus
W. A. WRIGHT, Comptroller-general, ET AL.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

All the Justices concur.

Bills of costs, $10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *Jul-* 10, 1906.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Central of Ga. Ry. Co. paid the above bill of costs.

Witness my signature and the seal of said court affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia.]

Z. D. HARRISON, *Clerk.*

22 STATE OF GEORGIA, *Fulton County:*

Be it remembered, That on January 30th, 1906, during the January Term 1906, of the Superior Court of Fulton County, before his honor John T. Pendleton, Judge of said court, then and there presiding, there came on to be heard the case of the Central of Georgia Railway Company against William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, sheriff of Fulton County—the same being an Equitable Petition brought against said defendants to cancel back tax assessments made by the said Comptroller General for taxes for each of the years 1896 to 1905 inclusive, or fifteen thousand shares of stock of the Western Railway of Alabama, and to enjoin each of the executions issued on said assessments against the Central of Georgia Railway Company for the years aforesaid.

The defendants having withdrawn their demurrers, the case by consent of parties was heard upon the merits by the court without the intervention of a jury by virtue of an order dated January 30th, 1906, to be found in the record hereof.

By consent of parties the affidavits of certain witnesses were used in lieu of having such witnesses give their testimony by depositions in open court, and with the same effect as if said testimony had been given in open court.

The Central of Georgia Railway Company introduced certain tables, financial reports, the value of other railroads and the as-
23 sessments for taxes thereon, and offered the testimony of witnesses and other evidence for the purpose of showing that the stock of the Western Railway of Alabama had been assessed by the Comptroller General for each of the years 1896 to 1905 grossly in excess of its value, and grossly in excess of the valuation put by the Comptroller General and taxing officers upon other property in the state, with the result of harmful discrimination against plaintiff in error, and with the result of denying to the plaintiff in error the equal protection of the laws guaranteed by the Fourteenth amendment of the Constitution of the United States,—the material portions of such testimony being found in an approved brief of evidence made a part of the record herein, and which is here referred to.

During the progress of the trial the defendants on January 30 1906, presented an amendment to their original answer. The Cen-

tral of Georgia Railway Company objected to the allowance of the prayer contained in paragraph 6 of said amended answer and moved to strike the same. Said paragraph 6 being in the following words:

"6. Answering paragraph 6, defendants deny that the list thereto attached, marked "Exhibit B," in which the petitioner alleges that the valuation placed therein on the Western Railway of Alabama is the true market value of said stock. But on the contrary, the true market value of said stock is as assessed by the Comptroller General and pray that the court may so find and decree."

24 Plaintiff in error urged as cause why said prayer of said amended answer should be disallowed and stricken, that there was no jurisdiction in the Superior Court of Fulton County to assess the said stock for taxation, "nor to re-value said stock for the purpose of taxation," and that the prayer in the said proposed amendment was vague and indefinite, but sought to invoke relief which the court had no jurisdiction to grant.

The court ruled that it could not in this cause decide or fix the value of said stock for the purpose of determining an amount for which an execution for taxes should proceed, but would hear evidence with a view to determining if the assessment was excessive and held that the said paragraph 6 with said prayer was proper to be allowed, and overruled said objection and refused to strike said prayer. To which order and judgment the Central of Georgia Railway Company then and there excepted, and now excepts, and assigns said ruling and refusal to strike said prayer in the amended answer as error:

1. The error being that said prayer was vague and indefinite, and that the Court had no jurisdiction to render a decree fixing the value of said stock.

The cause proceeded to a final decree on January 30, 1906, when the court at the conclusion of the evidence and after argument by counsel, made the findings and entered the decree to be found in the record, and which is here referred to.

In and by said decree the court ordered and directed that the *fi. fas.* for taxes in favor of the State against the Central

25 of Georgia Railway Company for the years 1897 to 1905 inclusive, proceed.

To which finding and decree the Central of Georgia Railway Company then and there excepted and now excepts and specifies the said decree as a judgment in said case which is in this bill of exceptions complained of, and says:

2. That the court erred in decreeing that said executions should proceed. The error being that each and every execution in favor of the state against the Central of Georgia Railway Company for the years 1897 to the year 1905 should have been perpetually enjoined by said decree as prayed by the Central of Georgia Railway Company.

For more particular assignment of error in rendering said decree the plaintiff in error says, that the court erred in rendering said decree in favor of the defendants and in decreeing that the tax *fi. fas.* should proceed.

3. Because the court should have decreed that the said executions were void, because based on Assessments which had been made without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

4. That said decree was contrary to law because there was, on the several dates of said assessments, no law or statute of force in the State of Georgia which afforded petitioner due process of law required by the Fourteenth Amendment to the Constitution of the United States in the assessment of back taxes on property
26 omitted from prior returns, and that each of said assessments for taxes against the petitioner on Western Railway of Alabama stock are null and void because issued without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

5. Because there is no law or statute of force in the State of Georgia which before or after the making of the said assessments or at the time of making the assessments afforded petitioner the right or opportunity to be heard as to its liability to said tax, or as to the valuation of the said stock, and that the assessments thus made by the Comptroller General seek to deprive petitioner of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, and the court erred in decreeing that such executions on said assessments should proceed.

6. Because the law of the State of Georgia, as contained in Sections 812, 813, 814, 847, 855, 874, 879, 949 of Volume 1 of the Code of Georgia of 1895, and the Acts of 1813, 1861, and 1804 in so far as they purport to authorize the assessment and valuation for taxation of property omitted from returns in prior years, is unconstitutional, null and void and contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that the said sections of said Code and the Acts of the General Assembly of the State of Georgia fail to afford the taxpayer an
27 opportunity to be heard on the question of the value of property omitted from the tax returns of prior years.

7. That said decree was error because the assessment of back taxes on property omitted from the return of a prior year is an act judicial in its nature, and the tax payer is entitled to due process of law in the assessment of such back taxes, with notice of the time and place of making such assessment, and the right and opportunity to be heard on the value of said property. Plaintiff alleges that the assessments involved in this case were each made without such opportunity and right to be heard, without due process of law, and are void because made in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

8. Because plaintiff alleges it appears from the record in said case that for the years 1897 to 1905, petitioner in good faith made its tax returns for each of said years; that the stock of the Western Railway of Alabama was not omitted from said returns or either of them with intent to conceal petitioner's returns or to escape taxation thereon, but that said stock was omitted in the honest belief and in

reliance upon the universal practice of the taxing department of the State of Georgia that the same was not taxable; that said *bona fide* return was duly accepted by the Comptroller General and for the said Comptroller without process of law and without the right or opportunity to petitioner to be heard and to offer evidence as to the value of said stock for each of said years, to issue assessments
28 for each of the years from 1897 to 1905, and to back tax petitioner on said stock without the right to be heard on the question of the valuation thereof is to deprive petitioner of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and the court erred in not enjoining said executions.

9. Because there is no law of force which affords petitioner the right of opportunity to be heard on the back assessments of omitted property, whereby said assessments for back taxes for the years 1897 to the year 1905 are each void and the decree should have perpetually enjoined the executions issued on said assessments.

10. Because on the evidence in said case to be found in the approved brief of evidence made a part of the record in this cause, and here referred to, plaintiff says that said assessments were issued without process of law, without a hearing, and without the opportunity to petitioner to be heard on the question of value of said stock, and without notice of the time and place when said assessments would be made, and the assessments and each of them are void because issued without due process of law, because petitioner was not given a day in court or an opportunity to be heard as to the value of the Western Railway of Alabama stock, and that said void assessments are sought to be used to deprive petitioner of its property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, and the court in not decreeing that the assessments should not be
29 cancelled and the executions issued thereon perpetually enjoined.

11. Plaintiff in error further assigns that said decree was error because it insist that the pleadings in said case and the admission of the defendants contained in their answer and amended answer, show the holders of domestic stock were not taxed thereon for the years 1897 to the year 1905, inclusive, nor have the holders of such stock been back taxed thereon for the years 1897 to 1905 inclusive; that the tax petitioners as the holders of foreign stock for said years and to fail to tax the holders of domestic stock for said years when foreign and domestic stock were both alike made taxable by the Second Section of the Act approved October 20th, 1885, providing for the return of property for taxation, is contrary to Article VII, Section II, Paragraph I, of the Constitution of Georgia, which provides that all taxation shall be uniform upon the same class of subjects, and is further contrary to Article I, Section I, Paragraph II of the Constitution of Georgia, which provides that protection to property shall be impartial and complete, and that the said decree for said reasons should have cancelled the assessments and perpetually enjoined the executions issued thereon.

12. Plaintiff in error further assigns that said decree was error as matter of law because it insists that the pleadings and the admissions of the defendants show that the holder of no foreign stock has been taxed in Georgia except petitioner and The Georgia Railroad & Banking Company, who together own the stock of the Western Railway of Alabama; that the taxation of plaintiff in error on
30 foreign stock for the years 1897 to 1905 and the failure to tax the holder of any other foreign stock for the same period is harmful discrimination against the petitioner in the administration of the law, and denies to petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

14. Plaintiff in error further assigns error in said decree, because it insists that the record shows that all other property in the State is returned by the tax payer at two-thirds of its market value, and that such returns on such two-thirds valuation is knowingly and intentionally accepted by the taxing officers and that where assessments are made by the Comptroller General or State Boards of Arbitration, he and they knowingly and intentionally assessed such property for taxation at approximately two-thirds of its market value, while the said Comptroller General having assessed petitioner's stock at the full capitalization value, made no reduction to equalize such valuation and assessment with the other property in the State, and that in assessing petitioner's stock without making a reduction allowed on other property the Comptroller General discriminated against petitioner to its injury, and that such action on the part of the Comptroller and the assessment consequent thereon denied to the petitioner the equal protection of the law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

31 15. Because plaintiff insists that the record in said case shows the other property in the State of Georgia is not assessed beyond its market value, while the stock of petitioner in the Western Railway of Alabama was assessed by the Comptroller and taxed to your petitioner at at least seventy-five per cent. above its market value, whereby petitioner was denied the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

16. Because plaintiff insists it appears from the record that the other property of the State is knowingly and intentionally accepted and assessed by taxing officers of the State at at least one third below its fair market value, while the shares of petitioner in the Western Railway of Alabama were assessed and taxed by the Comptroller General for each of the years at least seventy-five per cent. above its market value, whereby petitioner was denied the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

17. Because plaintiff insists that it appears from the evidence that the Comptroller General in valuing and assessing railroad property for taxation adopted the method of capitalizing net earnings at six per cent. and of deducting therefrom approximately one-third of the

value thus found for the purpose of taxation; also, that while the Comptroller adopted the method of capitalizing the net earnings of the Western Railway of Alabama for each and all of the
32 years at six per cent. for the purpose of determining the value of the Western Railway of Alabama, and deducted the bonded indebtedness for the purpose of finding the value of the stock, yet after finding the value of the stock by such method the Comptroller General made no reduction of one-third or any other sum from the valuation thus found; but assessed said stock for taxation at said valuation thus found without any deduction whatever; that in so doing, the Comptroller knowingly and intentionally discriminated against petitioner, and, in the administraton of the laws denied the petitioner the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment of the Constitution of United States.

18. Because it insists from the evidence in said case, that the Central of Georgia Railway Company is not the owner of the 15,000 shares of stock in the Western Railway of Alabama which are sought to be taxed against it by the assessments and executions sought to be enjoined by this petition, and the amendments thereto, but that the same is the property of the Central Trust Company of New York, and has been during all the years involved in this litigation. That the taxation of said property by the said State of Georgia for the said years is an attempt to tax property the situs of which is outside of the State of Georgia, and said taxation is therefore, in violation of the Constitution of the United States and of the Fourteenth Amendment thereof, in that it attempts to deprive petitioner of its property without due process of law, and deny to it the equal protection of the laws.

33 19. Because it insists upon the evidence in said case that the only interest which petitioner has in said shares of stock is an equitable, reversionary interest, subject to the legal title and possession of the Central Trust Company of New York and the equitable interest of the bond holders who are the *cestuis que trustent* of said Ceneral Trust Company of New York, and that the attempt to collect from this petitioner out of its property taxes upon the value of said shares of stock, as an entity, is an attempt to take the property of your petitioner, without due process of law, and is a denial to it of the equal protection of the laws, contrary to the Constitution of the United States and of the Fourteenth Amendment thereof.

20. That the assessments of the said shares for taxation against this petitioner is an effort on the part of the taxing officers of the State of Georgia to tax it on property in which it owns only an equitable, reversionary interest, as above stated, and that there is nothing in the laws or Constitution of the State of Georgia, which provides for such taxation, and the attempt to assess it is an effort to deprive petitioner of its property without due process of law and deny to it the equal protection of the laws, contrary to the Constitution of the United States and of the Fourteenth Amendment thereof.

21. Because the court erred in not enjoining said executions for the years 1897 to 1905, in each and every year for which the as-

sessments were made and the executions issued, the error being
34 that interest did not run, and under the law could not run, except from the date of an assessment and the date when the amount of taxes had been ascertained and an assessment made.

22. Because the court erred in not enjoining the executions for taxes for the years 1903, 1904 and 1905, issued against this petitioner, for that the said executions issued prematurely. Plaintiff says that the evidence in said case shows that petitioner was enjoined from making any returns and the Comptroller General from taking any steps to enforce the collection of taxes on said stock from the 22nd day of December 1902 to the 10th day of February, 1905, by a decree of the United States Circuit Court for the Northern District of Georgia, in the case of the Central Trust Company of New York vs. William A. Wright and the Central of Georgia Railway Company, and that the said Comptroller General has been enjoined by the orders of this Honorable Court in this case from taking any steps to enforce said taxes, or to issue executions thereon from and including said 10th day of February, 1905, to the 22nd day of January, 1906. Petitioner insists that during said period from December 22nd, 1902, to January 22nd, 1906, it was not required to make, nor was said Comptroller General authorized to receive any returns for taxes upon said shares of stock of the Western Railway of Alabama, and that said time should not be computed in determining whether or not this petitioner is in default, and that petitioner had the same time after the 22nd day of January, 1906, in which
35 to return the taxes of each of said years, 1903, 1904 and 1905, that it would have had in said years respectively had said orders and decrees not been rendered, and that said time had not expired within which it had the right to make said return, when said assessments were made and said executions issued for said several years.

23. Because the court erred in allowing the executions to proceed for interest, it appearing that the Central of Georgia Railway Company was on the 22nd day of December, 1902, enjoined from making return or paying taxes on said stock of the Western Railway of Alabama, and that said injunction was not dissolved until the 10th day of February, 1905, that to charge petitioner with interest during the time it was enjoined was contrary to law, and the court erred in not decreeing that interest on said executions should be abated for said period.

Plaintiff in error further assigns as error said decree is contrary to law.

Because the court erred in finding generally in favor of the defendants under the pleadings and facts in said case.

Because under the facts in said case, and the law applicable thereto, said decree was error, and should have enjoined the executions from 1897 to 1905 from proceeding.

The plaintiff in error on the 2nd day of February, 1906, duly made and filed its motion for a new trial, which was approved by the court. Plaintiff in error likewise on the 2nd day of February,
36 1906, filed a brief of the evidence, containing the material portions of the evidence introduced in said case, and contain-

ing all the evidence material to a clear understanding of the error complained of. Said brief of evidence was duly approved by the court, and made a part of the record to be sent up by the Clerk as a part of the record.

Said notice for a new trial was duly served upon the defendants, who acknowledged service and waived rule *nisi*.

After argument on said motion for a new trial by counsel for the plaintiff and defendants, the Judge, during the January Term, 1906, overruled the same.

To which judgment overruling the motion and refusing a new trial the Central of Georgia Railway Company then and there excepted and now excepts and specifies said judgment refusing a new trial as a judgment now complained of and assigns the same as error, and says that the court erred in overruling the said motion for new trial on each and all of the grounds thereof.

Plaintiff specifies as material to a clear understanding of the errors complained of:

1. The original petition with the exhibits attached thereto.
2. The amendments to the petition allowed and filed April 25th, 1905.
3. The amendment to the petition allowed and filed January 30th, 1906.
4. The original answer of the defendant, with exhibits thereto.
5. The defendants' amended answer allowed and filed April
37 26th, 1905.
6. The amendment to the defendants' answer allowed and filed January 30, 1906.
8. The consent order dated January 30th, 1906, submitting said case to the Judge without the intervention of a jury.
9. The findings and decree rendered January 30, 1906.
10. The brief of the evidence approved and filed February, 1906, and made a part of the record in this cause.
11. Motion for new trial, with the entries thereon.
12. The order overruling the motion for new trial.

And now during the January Term, 1906, of Fulton Superior Court, within thirty days from the rendition of the several rulings and decrees excepted to, and within thirty days from the making of the order refusing a new trial excepted to, comes the Central of Georgia Railway Company, plaintiff in error herein, tenders this its bill of exceptions, and prays that the same may be signed and certified, that the errors complained of may be considered and corrected.

This, February 2nd, 1906.

LAWTON & CUNNINGHAM,
ALEX. C. KING,
Attorneys for Central of Georgia Railway Company, Plaintiff in Error.

Addresses of Counsel for Plaintiff in Error:
Lawton & Cunningham, Savannah, Ga.
Alex. C. King, Atlanta, Ga.

38 STATE OF GEORGIA, *Fulton County:*

I do certify the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such and cause the same to be transmitted to the March Term, 1906, of the Supreme Court, that the erro-s alleged to have been committed may be considered and corrected.

This February 2, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

39 Due and legal service of the within and foregoing bill of exceptions and certificate is acknowledged; copy and all further service waived.

This second day of February, 1906.

JOHN C. HART,
Attorney General.
JOS. D. KILPATRICK,
Attorneys for Defendants, William A. Wright, Comptroller General, and John W. Nelms, Sheriff of Fulton County.

Filed in office Feb. 2, 1906.
ARNOLD BROYLES, *Clerk.*

40 STATE OF GEORGIA, *County of Fulton:*

I hereby certify that the foregoing bill of Exceptions hereunto attached is the true original Bill of Exceptions, filed in this office, in the case of Central of Ga. Ry. Co., Plaintiff is error *vs.* Wm. A. Wright, Comptroller General *et al.,* Defendant in error, and that a copy thereof has been made and is on file in this office.

Witness my hand and seal of said Court. This the 17 day of Feb. 1906.

ARNOLD BROYLES,
Clerk Superior Court, Fulton County, Ga.

Filed in Office Feb. 2, 1906.
ARNOLD BROYLES, *Clerk.*

Filed in Office Feb. 17, 1906.

LOGAN BLECKLEY,
D. C. S. C. Ga.

41 CENTRAL OF GEORGIA RAILWAY CO., Plaintiff in Error,
vs.
WILLIAM A. WRIGHT, Comptroller General, *et al.*, Defendants in Error.

42 *(Original Petition.)*

#12304.

Fulton Superior Court, Spring Term, 1905.

CENTRAL OF GEORGIA RAILWAY CO.
vs.
WM. A. WRIGHT, Comptroller Gen'l, & JOHN W. NELMS, Sheriff.

STATE OF GEORGIA, *County of Fulton:*

To the Superior Court of said County:—

The petition of Central of Georgia Railway Company, a corporation created by and organized under the laws of the State of Georgia, complains against William A. Wright, Comptroller General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, both of whom reside in Atlanta, in said County of Fulton, and respectfully shows:—

(1.) On the 27th day of October, 1902, the said William A. Wright, as Comptroller General of the State of Georgia, assuming to have authority of law so to do, but without any warrant or authority of law, issued an execution against your petitioner for the sum of Eight Thousand One Hundred and sixty dollars, claimed therein to be due for certain taxes for the year 1900, which your petitioner was claimed to owe to said State of Ga.

Said execution was issued by said Comptroller General for said sum of Eight Thousand One hundred and sixty dollars which said Comptroller then claimed and demanded from your petitioner as
43 taxes for said year upon 15,000 shares of the capital stock of the Western Railway of Alabama, being the sum arrived at by calculating the rate of State taxation for the year 1900 upon the par value of said 15,000 shares, or One Million Five Hundred Thousand ($1,500,000.00) Dollars, and which sum as an alleged tax said Comptroller claimed your petitioner was liable to pay.

(2.) On the 13th day of November, 1902, the said John W. Nelms, sheriff of Fulton County, assuming to have authority of law so to do, but without any warrant or authority of law, caused the said execution above set forth to be levied on the following described lot of land situate in the city of Atlanta, Fulton County, Georgia, said property being the property of petitioner, and in the possession of petitioner, to-wit: Beginning at a point on the Northerly line of Mitchell Street, distant Three hundred and thirty-three (333) feet

from the Northwest corner of Mitchell Street and Madison Street, and running thence in a Northeasterly direction at an angle of Seventy four (74) degrees to the left with said Northerly line of Mitchell Street, a distance of Four Hundred and seventy-five (475) feet, thence by a line at right angles to the Northwest a distance of Fifty-five (55) feet, thence by a line at right angles to the Southwest and parallel to the line measuring Four hundred and seventy five (475) feet a distance of Four hundred and ninety (490) feet to a point on the said Northerly line of Mitchell Street, thence to the Southeast along the said Northerly line of Mitchell street a
44 distance of Fifty-seven (57) feet to the point of beginning, containing sixty one and one hundredths (61/100) acres, more or less, and upon which is situated the three story brick local freight offices and single story brick warehouse of the Central of Georgia Railway Company.

(3.) Petitioner was not the owner of it, or possessed of, the said 15,000 shares of stock in the Western Railway of Alabama, in respect of which the said taxes were assessed by the said William A. Wright, Comptroller General, against petitioner at any time during the year 1900, as alleged by the said William A. Wright in the said tax execution hereinbefore set forth, nor has petitioner ever been the owner of, or possessed of, said shares of stock, and the only interest which petitioner has ever had in said shares of stock is an equitable interest therein, which is hereinafter set forth.

(4.) About the year 1875, The Central Railroad & Banking Company of Georgia, a railroad corporation of the State of Georgia, under the authority of an act of the Legislature of Georgia approved February 27, 1875, became the purchaser of and acquired an undivided one-half interest and ownership in fee simple of the railroad and franchises of the Western Railroad of Alabama, a railroad which extends from West Point, in the State of Georgia, via Montgomery to Selma in the State of Alabama, a distance of about one hundred and forty (140) miles, all of said railroad with the exception of about one-quarter (¼) of a mile, lying in the State of
45 Alabama.

The other one-half interest in said railroad was at the same time and under authority of the same act of the General Assembly of Georgia, purchased by the Georgia Railroad and Banking Company, a railroad corporation of the State of Georgia.

(5.) The said Central Railroad & Banking Company of Georgia and said Georgia Railroad and Banking Company owned said railroad as tenants in common, in fee simple, from the date of said purchase to some time in the year 1882, at which time, for purposes of convenience in the management of the same, a corporation was organized under the general railroad laws of the State of Alabama, knows as the Western Railway of Alabama, of which said corporation so formed the said Georgia Railroad and Banking Company, and said Central Railroad & Banking Company of Georgia became the two stockholders, the entire capital stock of said corporation being Three Million ($3,000,000.00) Dollars par value, divided into shares

of One hundred ($100.00) Dollars each, and to each of said railroad companies last mentioned one-half of said capital stock or one Million, Five Hundred Thousand ($1,500,000) Dollars par value thereof, was issued.

The said Western Railway of Alabama has been at all times since said time held and owned by said Western Railway of Alabama, and the said Western Railway of Alabama still remains as the owner thereof, owning no property in the State of Georgia except a short piece of track of about one-quarter of a mile, which is in the County of Troup, in said State of Georgia.

46 (6.) On or about the 2nd day of May, 1887, the said Central Railroad & Banking Company of Georgia, executed and delivered to the Central Trust Company of New York, a corporation organized and existing under the laws of New York, and resident in the city of New York, a certain deed of trust, hereinafter referred to as the "Collateral Trust Mortgage," wherein and whereby, for the purpose of securing an issue of Five Million ($5,000,000) Dollars in bonds, bearing the same date and due on the first day of May, 1937, with interest from date, payable semi-annually, at Five (5) per cent. per annum, it did transfer, sell and convey to the Central Trust Company of New York, among other stocks and bonds, the said 15,000 shares of the capital stock of the Western Railway of Alabama, of the par value of One hundred ($100.00) dollars per share, and in pursuance thereof the said shares of stock duly transferred by the Central Railroad and Banking Company of Georgia to the Central Trust Company of New York on the books of the Western Railway of Alabama, and a certificate for the said 15,000 shares of stock was issued by the Western Railway of Alabama to the Central Trust Company of New York, as Trustees, and the said Central Trust Company of New York, as Trustee, under said trust deed thereupon became, and has been ever since said time, the owner of said shares of stock, and entitled to exercise all of the rights, powers and privileges of a shareholder in said Western Railway of Alabama, and to collect the dividends thereon. There are now outstanding under the said trust deed bonds of the aggregate par value of Four Million, Eight Hundred and Eighty Thousand

47 ($4,880,000) Dollars ($120,000 of said bonds having been retired as hereinafter explained), and the same are now in the hands of *bona fide* purchasers thereof for value.

(7.) The only right or interest remaining in the said Central Railroad and Banking Company of Georgia in and to the shares of stock was that in the event said bonds, principal and interest, should be duly paid according to their terms, that said shares of stock should then, and in that event, be re-conveyed and re-transferred to said Central Railroad and Banking Company of Georgia. Said deed of trust is here to the Court shown, and leave is prayed to produce the same upon the hearing, or hereafter attached a copy thereof as an exhibit to this proceeding, in which event the usual leave of reference to the same is prayed.

(8.) Ever since the making of said Collateral Trust Mortgage, the said shares of stock have been registered on the books of said

Western Railway of Alabama in the name of the Central Trust Company of New York, as Trustee, and the certificates therefor have been in its actual custody and possession in the City of New York, and the same are now in its actual custody and possession in the City of New York, and are now held by the Central Trust Company in the said City of New York and have always been so held by it since the original delivery thereof by the said Central Railroad and Banking Company of Georgia at or about the time of the execution of the said Trust Deed above referred to, and have not been
48 since said time, or at any time in the custody or possession of the said Central Railroad and Banking Company of Georgia or its successors in interest or estate, or within the limits of the State of Georgia, and especially were not at any time during the year 1900.

(9.) During the year 1892, all of the property and assets of every character of the said Central Railroad and Banking Company of Georgia passed into the hands of Receivers of the United States Circuit Court for the Southern District of Ga., and among the assets of the said Company the equitable interest of the said Central Railroad and Banking Company of Ga., in and to the said 15,000 shares of stock of the Western Railway of Alabama, and said property and assets were administered by the said Circuit Court of the United States through its Receivers and sold out under various decrees of foreclosures of the mortgages upon its property. This particular asset, to-wit, the equitable interest of the Central Railroad & Banking Co., of Ga., in the said 15,000 shares of stock of the Western Railway of Alabama, was, together with a number of other securities, pledged on the 19th day of January, 1895, by H. M. Comer, as Receiver of the Central Railroad and Banking Co., of Ga., under the order and authority of the said Circuit Court of the United States to the Mercantile Trust Company, a corporation existing under the laws of the State of New York, and residing in the City of New York, as Trustee for a syndicate of lenders, to secure a loan of Six Hundred Thousand ($600,000) Dollars. Thereafter, on September
49 18, 1895, there having previously been a default in the payment of the loan of the Mercantile Trust Company, the equitable interest of the said Central Railroad and Banking Company of Ga., in the said 15,000 shares of stock of the Western Railway of Alabama, together with all the other securities, pledged to secure said loan, were sold under an order of the said Circuit Court of the United States for the Southern District of Ga., in New York City, and purchased at said sale by the said Mercantile Trust Company, and the proceeds of said sale applied to the extinguishment of the said indebtedness. Thereafter, the Mercantile Trust Company transferred all of its right and interest in and to said shares of stock of the Western Railway of Alabama to Samuel Thomas and Thomas F. Ryan, both of the City of New York, and the said interest was likewise transferred by the said Samuel Thomas, and Thomas F. Ryan on June 9, 1896, to your petitioner, the Central of Georgia Railway Co.

(10.) Your petitioner, the Central of Georgia Railway Co., was

incorporated under the General Railroad laws of the State of Georgia on the 17th day of October, 1895, and not until June 9, 1896, did it acquire any interest of any character, kind or nature, in the said 15,000 shares of stock of the Western Railway of Alabama, and the only interest which petitioner did then acquire in said shares of stock was the equitable interest which had been pledged to the Mercantile Trust Company. Your petitioner is in no sense the pledger
50 of said stock. The stock was conveyed, as hereinbefore stated, by the Central Railroad and Banking Company of Ga., to the Central Trust Company, as Trustee, on the second day of May, 1887, and your petitioner did not come into existence until the 17th day of October, 1895. Your petitioner is not liable for the indebtedness secured by the said collateral trust mortgage, and is not an obligor upon the bonds secured by said mortgage. The Central Railroad and Banking Company of Ga., is the obligor upon said bonds and indebted under the terms of said mortgage. So that if there were a default as to any of the covenants of said mortgage, and the said mortgage should be foreclosed and the security thereunder be exhausted, your petitioner, the Central of Georgia Railway Company, would not be liable for the deficiency due under said mortgage. In other words, the Central of Georgia Railway Company does not stand in the shoes of the Central Railroad and Banking Company of Ga. Your petitioner, the Central of Georgia Railway Company, is entitled to the dividend on the said 15,000 shares of Western Railway of Alabama stock, and to vote said stock only in the event the interest due on the bonds secured by said mortgage is promptly paid and the other conditions and covenants of said mortgage duly performed. Since the year 1896, your petitioner had paid the interest on the said collateral trust bonds amounting to ($244,000) Two Hundred and Forty-four Thousand Dollars per annum. Petitioner attaches hereto a statement marked Exhibit "A" showing the dividends and interest it has received on the securities pledged under the said collateral trust mortgage from the years 1896 to 1904,
51 both inclusive, (the equitable interest in all the securities pledged under said mortgage being vested in petitioner by various assignments) from which it appears that in order to obtain the dividends on said 15,000 shares of Western Railway of Alabama stock, and on the other stocks and bonds pledged under said collateral trust mortgage, petitioner has paid out in interest on said mortgage during said term, Two Million One Hundred and ninety-six ($2,196,000) dollars, and has received during said period from the securities pledged thereunder the total of One Million, Thirty two Thousand, Five Hundred and sixty-six and 92/100 ($1,032,566.92) Dollars, making a deficit of One Million, One Hundred and Sixty-three thousand, Four Hundred Thirty-three and 8/100 (1,163,433.08) Dollars. So that its interest in said Western Railway of Alabama stock has been of no pecuniary advantage to it.

(11.) Your petitioner, therefore, alleges that it is not the owner of, and possessed of, 15,000 shares of stock in the Western Railway of Alabama, and that the basis upon which the said execution is issued by William A. Wright, Comptroller General, that said shares

of stock are owned and possessed by petitioner is not true in point of fact, and the said William A. Wright, Comptroller General, has no authority or power to assess the taxes on said shares of stock against your petitioner as though it were the owner of the full legal title in the said shares of stock. If said shares of stock were taxable in the State of Georgia, which your petitioner denies, your petitioner could not be taxed with respect to said shares beyond its
52 interest in said stock. In other words, your petitioner as the owner of only an equitable interest in said stock, which interest is only of a nominal value, could not be taxed as though it were the legal owner of the full title to said shares of stock, and your petitioner alleges that it is illegal and a gross injustice to assess the full par value of said shares of stock to petitioner when its interest is only of an equitable nature, and of very doubtful value, as hereinbefore set forth, and that the valuation of said shares at par by the Comptroller General is grossly excessive, and assesses against your petitioner the value of interests in said stock of other persons, to whom, and as to whom, your petitioner is under no legal obligation to pay, and whose interests are not taxable property located in the State of Georgia.

(12.) All the legal taxes for which the Western Railway of Alabama is liable upon its property have been duly paid, and the Western Railway of Alabama pays taxes upon the market value of the property as fixed by the Tax Assessors assessing the same. And petitioner avers that under the law of this State, declared by the decisions of the Supreme Court of this State, and recognized by the universal practice of the different departments of the State government, shares of stock—and especially those in Railroad corporations—are recognized as not being taxable property, but as being merely the representation of the property owned by the corporation by which said shares are issued. The State of Ga. has always regarded the taxation of property in the hands of a corporation,
53 and of the shares of stock evidencing the interests of the shareholders in such corporation, as double taxation, and has declined to make such double taxation and has recognized shares of stock of like corporations chartered by other states, where properties are located out of the State, as representing property without the State not subject to taxation, and has declined to tax such shares. Therefore, your petitioner alleges that, even if it were the owner of the full legal title of the 15,000 shares of stock of the Western Railway of Alabama, the said shares of stock would not be taxable to it, because shares of stock in corporations are not taxable property within said State, within the meaning of the law of Georgia, and in the sense in which the word property within the territorial limits of the authority levying the tax is used in the Constitution of the State of Georgia, and has been recognized in practice by the different departments of the State government for many years as not being such property.

(13.) The Western Railway of Alabama being a foreign corporation and all of its property being situated in the State of Alabama (with the very small exception hereinbefore referred to) and all of

the taxes on the property of the said Western Railway of Alabama having been paid by it and the certificates for the said 15,000 shares of stock of the Western Railway of Alabama being registered on the books of the Western Railway of Alabama in the name of the Central Trust Company, and the said certificate being in the actual custody and possession of the Central Trust Company in the
54 State of New York, and your petitioner owning only an equitable interest therein as hereinbefore set forth, the said shares of stock *is* not taxable to your petitioner in the State of Ga.

(14.) Petitioner shows that said shares of stock as a taxable property can be taxable only in some jurisdiction in which said shares, if viewed as a separate entity and property in the hands of the shareholder, have a situs.

That as a share in a corporation, the situs of such shares are at the principal office of the corporation issuing the certificates evidencing the ownership of such shares, and holding the shares. That the principal office of the Western Railway of Alabama is in the city of Montgomery, Montgomery County, Alabama, and that said shares of stock are there situated.

That if the shares of stock are to be treated as delivered by the corporation to the stockholders, and as a personal property distinct in his hands, that said shares of stock are then in the possession of the Central Trust Company of New York, and are situated as such personalty in the City, County and State of New York, the same being office and domicile of said Central Trust Company of New York, and that the same are property located in the State of New York.

That the interest of your petitioner is an equitable interest in such property located and held, and having its situs in the State of New York, and not taxable as property in the State of Georgia. That the effort now made by said William A. Wright, Comptroller
55 General, to tax said 15,000 shares of stock, or any interest therein, against your petitioner, or to cause your petitioner to pay any sum as taxes thereon, is an effort to tax property located outside of the State of Georgia, and deprives petitioner of its property without due process of law, and denies it the equal protection of the law, contrary to the 14th Amendment of the Constitution of the United States and the Constitution of the State of Georgia.

(15.) The State of Georgia does not through any of its taxing officers require shares of stock in railroads chartered by the State of Georgia to be listed for taxation, nor are the same taxed to the owners and holders thereof, but the same are by the said taxing officers of the State of Georgia excluded from the tax returns of individuals and corporations, and no taxes are paid or demanded thereon. The same is true of the stock of all manufacturing corporations in the State of Georgia, and in no case in the State of Georgia are the shares of domestic corporations taxed, nor has it ever been done in this State, as far as petitioner is informed and believes. Petitioner alleges, and charges that the action of the said Comptroller General in demanding that said shares of stock of the Western Railway of Alabama a foreign corporation, shall be returned by petitioner for

taxation, and that taxes should be paid thereon, is contrary to the Constitution of the State of Georgia, which provides that all property shall be taxed, and under which Constitution property cannot be classified for the purposes of taxation, but all property, without regard to class or kind, must be taxed. The separation of
56 shares of stock into two classes, one being shares of stock in foreign corporations and the other shares of stock in domestic corporations, and taxing the former and not taxing the latter, is contrary to the Constitution of the State of Georgia, and illegal and void. Stock in a domestic corporation is not taxable property, but a representation of an interest in the corporate property which is taxed. Like stock in foreign corporations is not taxable. The domestic corporations pay taxes on their property in the State of Georgia, and that foreign corporations do not pay taxes in Georgia on their property which is not situated in the State of Georgia, does not make the shares of stock in foreign corporation any the more personal property in the hands of the shareholders than are shares of stock in domestic corporations. In neither case are the shares of stock taxable property, as shares of stock in incorporated companies are by the law mere symbols or evidence of the ownership of the corporate property itself, as it has been heretofore declared to be the law by the Supreme Court of this State, and recognized by the different departments of the State Government.

(16.) Petitioner alleges that the taxation to petitioner of the said shares of stock of the Western Railway of Alabama a foreign corporation, by the Comptroller General of the State of Georgia, and at the same time the entire non-taxation by the Comptroller General and the other taxing departments of the State government of shares of stock in domestic corporations in the hands of other per-
57 sons and corporations, is a denial to your petitioner of the equal protection of the laws, and is contrary to the Constitution of the United States.

(17.) Petitioner avers that any attempted statute or law claimed to exist in the State of Georgia, purporting to authorize the taxation of Railroad shares in foreign corporations in the hands of the holders as personal property, is contrary to the Constitution of Georgia, which forbids any classification of property for purposes of taxation.

That it is further contrary to said Constitution in that it does not levy or collect said alleged tax under uniform laws.

It is further contrary to said Constitution, in that it seeks to tax property not within the territorial limits of the authority levying the tax.

It is further contrary to the Constitution of the United States, in that it denies to the person holding such shares the equal protection of the laws.

(18.) Petitioner shows that under the laws of Georgia, the several railroad companies doing business in said State are required annually on the first day of each year to make return of their railways and of all other properties subject to taxation, to the Comp-

troller General of the State, and that the taxes thereof shall be paid to the State Treasury by the first day of October and not later than December 20th, of each year. Under Code Sec. 812, it is further provided that if the Comptroller General shall find a return
58 "below the true amount, or false in any particular, or in any wise contrary to law, he shall correct the same and assess the true amount from the best information at his command, within sixty days.

In all cases of assessment, or of correction of return, as herein provided, the officer or person making such return shall receive notice and shall have the privilege within Twenty days after such notice to refer the question of true value or amount, as the case may be, to arbitrators." And it is also provided by the 13th Section of the Tax Act of 1898, under which the taxes of 1900 are assessed, and levied, that "on failure to make returns, or refusal to pay tax, said companies shall be liable to all the penalties provided by law, and the Comptroller General is hereby required, upon failure of such companies to make returns, or if made and not satisfactory to said officer, to proceed against such companies as provided in Sec. 812 of the Code of 1895, Vol. 1."

Since the said Western Railway of Alabama was chartered and its stock issued in the year 1882, the Central Railroad & Banking Company of Georgia during that year, and until the year 1896, by its officers or by the Receivers appointed for its properties, returned its taxable properties to said Comptroller General for taxation; that commencing with the year 1896, the Central of Georgia Railway Company has returned for taxation its taxable property to said Comptroller General and had paid to him the taxes on the property so returned and assessed. At no time during all said years have the shares of stock of the Western Railway of Alabama been re-
59 turned for taxation, nor have taxes been assessed or paid thereon. At no time until during the month of June, 1901, was any tax demanded either from the said Central Railroad and Banking Company of Ga., or your petitioner, the Central of Georgia Railway Company, and on said date last mentioned the said William A. Wright, Comptroller General, for the first time made any claim or demand upon petitioner that it should pay taxes for the year 1900 on said shares of stock. The assessment of said shares of stock against your petitioner was not made by the Comptroller General until the 27th day of October, 1902. Petitioner made its return for the year 1900, and the said return was not objected to by the Comptroller general as "false in any particular, or in any wise contrary to law," and taxes were duly assessed against it on said return and the taxes, State, County and Municipal, were duly paid to the State Treasury before the 20th day of December, 1900. Petitioner alleges that its return for the year 1900 so made and accepted by the Comptroller General, was conclusive upon the Comptroller General, and that he had no authority or warrant of law to assess against petitioner in the year 1902, long after the taxes for the year 1900 had been paid, any property which may have been omitted from said

return, and that there is no machinery provided by law which gives to the Comptroller General such authority and power. Under the Statutes the Comptroller General is precluded from correcting a return after the expiration of sixty days from the time the return is made, otherwise the tax payer is cut off from the right of
60 arbitration as to the value of the property provided for by Code Sec. 812 and the 13th Section of the Tax Act of 1898. The only case in which the Comptroller General can make an assessment without the notice provided by the statute is in case of a failure to make any return at all, and that the assessment of said tax and issuance of said execution to enforce the same is without any authority of law on the part of said William A. Wright, acting as such Comptroller General, and is void, and should be restrained.

(19.) Petitioner alleges that if under the statutes of the State of Georgia the Comptroller General had any power or authority to assess taxes to petitioner with respect to the shares of the Western Railway of Alabama, omitted from its return of the year 1900, after the expiration of the year 1900, that such pretended authority of law would afford no due process of law, nor is any such due process of law provided by the statutes of the State of Georgia which is contrary to the Constitution of the State of Georgia and of the United States, and the law claimed as authority for such enforcement of taxes deprives your petitioner of its property without due process of law, which is contrary to the Constitution of the United States. There is no notice provided by the statutes of the State of Georgia to the Tax-payer from the Comptroller General in such cases, that the property omitted from its return is considered by the Comptroller General as taxable property, nor is there any notice of any kind or character provided or required by the statutes
61 that the Comptroller General will proceed to tax such property to the tax payer, nor is there any opportunity given by law at any time for the tax payers to be heard either with respect to the question as to whether or not his property is taxable, nor is any opportunity given to the tax payer by the said statutes to be heard at any time with respect to the valuation of his property. If the existing laws do attempt to give to the Comptroller General such power and authority, then under such pretended law the property is assessed, and the valuation fixed arbitrarily by the Comptroller General, without any notice of any character, or without any opportunity to be heard at any time before him, or then, or thereafter before any other officer or tribunal, and upon the mere *ex parte* determination by the Comptroller General that the property is subject to taxation, and upon the arbitrary valuation thereof by him. The execution which the Comptroller General issues thereon against the tax payer is conclusive upon the tax payer as to the valuation of his property. The proceeding by the Comptroller General in this present case under the assumed authority of such a law, deprives petitioner of his property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, and also to the Constitution of the State of Georgia.

(20.) Petitioner avers that the said property and premises hereinbefore described which have been levied upon by the said John W. Nelms, Sheriff of Fulton County, under said alleged execution for taxes, is the property of petitioner, creates an apparent lien
62 and cloud upon the title of petitioner to the said premises so levied on. If the said property so levied on is sold under said execution, a deed will be executed to the purchaser by the said Sheriff and said deed will create a cloud upon the title of petitioner, and will give to the claimant thereunder an apparent right in or to the property levied upon. The facts showing the invalidity of said execution and of any deed made thereunder of said property will not and do not appear upon the face of said execution and deed, but are matter of proof extraneous thereof, and under the laws of the State of Georgia, a purchaser asserting title thereunder would be required only to put in evidence the execution and the deed made in pursuance thereof, without showing any other of the proceedings, but the same are matters of proof to be produced by any person attacking the same. Petitioner cannot immediately or effectually maintain or perfect its rights by any other course or proceeding open to it. It is necessary, therefore, that the further progress of said execution and any attempted sale thereunder, or the execution of any deed thereunder, shall be enjoined in order to prevent a cloud being created upon the title of petitioner in and to the said premises.

(21.) Petitioner does not know whether any other executions for taxes of other years upon said stock had been issued by said William A. Wright, Comptroller General, but upon information and belief avers that it is the purpose of the said William A. Wright, acting as said Comptroller General, to demand and seek to enforce
63 payment not only of taxes for the years succeeding said year 1900 upon said 15,000 shares of stock of the Western Railway of Alabama, but to claim that taxes are due thereon for all years prior thereto, from the year 1882 up to the present time. Upon information and belief, petitioner states that the amount so claimed will aggregate Two Hundred Thousand ($200,000) Dollars, or other like large sums, and that, unless said execution and the levy thereon is enjoined, and the issuance or enforcement of any other executions for said other years, petitioner will be subject to a multiplicity of actions and that the injury done to your petitioner will be irreparable in damages.

(22.) Petitioner has no adequate remedy under the rules of the common law, nor any remedy at all, and is unable to obtain any relief except in a court of equity, and unless the said William A. Wright, acting as such Comptroller General, is immediately restrained and enjoined from enforcing said execution, and the said John W. Nelms, the Sheriff of Fulton County, is likewise restrained and enjoined from further proceedings under said execution, petitioner will suffer irreparable damages.

(23.) Petitioner shows that said attempt to collect said tax is illegal and void.

(1.) Because petitioner has no property interest in said shares

located in the State of Georgia, or the situs of which is in the State of Georgia for the purposes of taxation.

(2.) Because petitioner is not, in point of fact, the owner
64 or possessed of, the said 15,000 shares of stock of the Western Railway of Alabama, but is only possessed of an equitable interest in the said shares of stock, and the execution is issued against petitioner as the absolute owner of said shares of stock, and the whole value of the said shares of stock is taxed to your petitioner, whereas the equitable interest of your petitioner in said shares of stock is only of a nominal value.

(3.) Because the equitable interest which petitioner does own in said shares of stock is not taxable property.

(4.) Because in taxing said shares of stock to your petitioner as though it was the owner of the full legal title, the valuation put upon said shares and said full legal interest therein, by the Comptroller General, is grossly excessive and many times the true value thereof.

(5.) Because under the Constitution and the laws of the State of Georgia and the practice of the several taxing departments of the State government, shares of railroad stock are not taxable property but the mere symbol of the ownership of the stockholder in the corporate property itself.

(6.) Because the Western Railway of Alabama is a foreign corporation, and pays taxes on its property, and the said 15,000 shares of stock of the said Western Railway of Alabama are not in the State of Georgia and have never been since the existence of petitioner, but have been in the State of New York in the custody and possession of the Central Trust Company of New York, a
65 resident of the City of New York, and the only interest in said stock owned and possessed by petitioner is of a purely equitable nature in such property so located without the State of Georgia, and the Comptroller General by taxing said stock to petitioner is taxing property in another State without any authority to do so under the laws of Georgia, and contrary to the Constitution of the United States.

(7.) Because shares of stock in domestic railroads not being taxed in the State of Georgia on the theory that such shares are mere representations of the corporate property; shares in foreign corporations being of the same nature, are not taxable to the owner thereof in the State of Georgia, because, under the Constitution of the State of Georgia property cannot be classified for the purpose of taxation, and as railroad stock in domestic corporations is non-taxable because such stock is a mere representation of property itself, shares of stock in a foreign corporation are, for the same reason, non-taxable, and the classification for the purposes of taxation of shares of stock into foreign and domestic shares, is a classification of property contrary to the Constitution of the State of Georgia.

(8.) Because, under the Constitution and laws of the State of Georgia, all property being taxable as one class, the taxation to petitioner, a resident of Georgia, of shares of stock in a foreign

corporation, and the habitual and universal non-taxation to residents of the State of Georgia of shares of stock in domestic corporations, is a denial to petitioner of the equal protection of the laws,
66 and contrary to the 14th Amendment of the Constitution of the United States.

(9.) Because there is no machinery provided by the law for the assessment by the Comptroller General after the lapse of the calendar year of property omitted from a return made in the honest belief that the property is not taxable. The power is given to the Comptroller General to assess after the year only in case no return is made at all by the tax payer.

(10.) Because if the Comptroller General is attempted to be authorized to make the assessment under the statutes of the State, the said statutes do not provide for any notice of any kind or character to the tax payer, and the tax payer has no opportunity to be heard at any time, whereby petitioner is deprived of its property without due process of law, contrary to the 14th Amendment of the Constitution of the United States.

(24.) Petitioner shows that shortly after said execution was issued, the enforcement thereof was suspended by the litigation brought by the Central Trust Company of New York as mortgagee of the property levied on, to which litigation petitioner was made a defendant, the Central Trust Company claiming that the levy of said execution created a cloud upon its mortgage estate in and to said property so levied on. That since said time the lien of said mortgage upon said premises has been released and extinguished, and said Central Trust Company has withdrawn its said litigation
67 without any decree or decision being rendered thereon. That because of said litigation, which restrained the enforcement of said tax execution, and under which many of the questions raised in this petition were involved, petitioner was not in a position to present this present petition, or otherwise litigate the question herein involved; and now so soon as the same is out of the way it has instituted this equitable petition in the premises.

(25.) Wherefore, petitioner being remediless under the rules of the Common law, and unable to obtain any relief except in a Court of Equity, and expressly waiving discovery from the said defendants, and each of them, prays:—

(1.) That it be adjudged that the situs of said shares of stock, and of any interest of your petitioner therein, is not in the State of Georgia, nor subject to be taxed by said State.

(2.) That it be adjudged that neither the said shares of stock, nor the interest of petitioner therein, are subject to be taxed by the State of Georgia, and that the said William A. Wright, Comptroller General, and John W. Nelms, Sheriff of Fulton County, are proceeding without any warrant or authority of law, and contrary to the Constitution of the State of Georgia, and to the Constitution of the United States.

(3.) That the said William A. Wright, as Comptroller General shall be perpetually enjoined from enforcing said tax execution or any other tax executions for like taxes of other years, and that an

adjustment *pendente lite* shall immediately issue restrain-
68 ing the said William A. Wright, Comptroller General, from further proceeding with such executions.

(4.) That the said John W. Nelms, as Sheriff of Fulton County, be likewise perpetually enjoined either "through himself or any deputy, from enforcing the said pretended execution for taxes lodged in his hands, and especially from selling the said property levied on, or from executing any deed thereto, and that an injunction *pendente lite* shall immediately issue restraining the said John W. Nelms, Sheriff of Fulton County, from further proceeding with said execution.

(5.) That petitioner may have all other and further relief which the case may require and equity afford.

(6.) That process may issue commanding the said defendants to be and appear at the next term of this Honorable Court to answer (but not upon oath, said oath being specifically waived) this petition, and abide the further order and decree of the Court.

LAWTON & CUNNINGHAM,
ALEX. C. KING,
Solicitors for Petitioner.

69 STATE OF GEORGIA, *County of Chatham:*

You, A. R. Lawton, do swear that you are First Vice President of the Central of Georgia Railway Company, complainant in the foregoing bill, and that the matters and things stated in the foregoing bill are true, except where they are specifically stated upon information and belief, and, as to such facts, you are informed and believe them to be true.

ALEXANDER R. LAWTON.

Sworn to and subscribed before me, this 1st day of February, 1905.
WM. M. FARR, [N. P. SEAL.]
N. P., Chatham Co., Ga.

In the Superior Court of Fulton County. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY
v.
WILLIAM A. WRIGHT, Comptroller General, and JOHN W. NELMS, Sheriff of Fulton County.

Upon considering the Bill of Complaint in the foregoing cause, and it being made to appear to the Court that the Honorable J. H. Lumpkin, Judge of the Superior Court of Fulton County, and resident in said County, is absent from the circuit, so that the business cannot be done as speedily as necessary, it is thereupon.

Ordered that the defendants show cause in the Superior Court
of Fulton County before the Honorable J. H. Lumpkin,
70 Judge thereof, on Saturday March 11th, 1905 (with leave to the defendants of ten days notice to the complainant to

set the case down for an earlier hearing) why the injunction prayed for should not be granted.

In the meantime, and until the further order of the Superior Court of Fulton County, it is ordered that the defendants, William A. Wright, Comptroller General, and John W. Nelms, Sheriff of Fulton County, be and they are hereby restrained from taking any further steps to enforce said taxes, or the executions issued for the same.

Let the Bill of Complaint and this order be filed in the Superior Court of Fulton County, and let a copy of the Bill and of this order be served upon the defendants within ten days from the date of this order.

This 10th day of Feb., 1905.

L. S. ROAN,
J., S. C., S. Mt. Ct.

Filed in office this the 10th day of Feb., 1905.

A. B. HARRISON,
Deputy Clerk.

STATE OF GEORGIA, *County of Fulton:*

CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
WILLIAM A. WRIGHT, Comptroller General of the State of Ga., and JOHN W. NELMS, Sheriff of said County.

To the Coroner of said County, Greeting:

The Defendants are hereby required, personally or by at-
71 torney to be and appear at the Superior Court, to be held in and for said County on the first Monday in March, 1905, then and there to answer the Plaintiff's Complaint, as in default thereof said Court shall proceed as to justice shall appertain.

Witness, The Honorable J. H. Lumpkin, Judge of said Court, this 10th day of Feb., 1905.

A. B. HARRISON,
Deputy Clerk.

GEORGIA, *Fulton County:*

I have this day served the Defendants W. A. Wright, Comptroller General of the State of Georgia and John W. Nelms, Sheriff of said County, each personally with a copy of the within petition and process and order.

This Feb. 16th, 1905.

W. W. THOMPSON, *Coroner.*

Dividends Received by Central of Georgia Railway Company on Securities Pledged under Collateral Trust Mortgage, Central Railroad & Banking Company of Georgia, and Interest on Collateral Trust Bonds, C. R. R. & B'k'g Co., Paid by C. of G. R'y Co.

Years.	Stocks.			Bonds.	Total.	Interest on collateral trust bonds paid by C. of G. R'y Co.	Surplus *. Deficit †.
	A. & P. R'd Co., 1,454 shares.	O. S. Co., of Sav'h, 19,950 shares.	The W. R'y of Ala., 15,000 shares.	Bonds C. & W. C. R'y Co., 1,589 income.			
1896	$5 816 00	$110 159 33	$20 000 00	Bonds (substituted for P. & W. C. R'd Co. bonds).	$135 975 53	$244 000 00	† $108 024 47
1897	8 724 00	195 394 64	45 000 00		249 118 64	244 000 00	* 5 118 64
1898	8 724 00	30 739 89			39 463 89	244 000 00	† 204 536 11
1899	45 074 00	96 014 57	75 000 00		216 088 57	244 000 00	† 27 911 43
1900	8 724 00	16 520 49	60 000 00		85 244 49	244 000 00	† 158 755 51
1901	8 724 00		60 000 00		68 724 00	244 000 00	† 175 276 00
1902	8 724 00		60 000 00		68 724 00	244 000 00	† 175 276 00
1903	8 724 00		60 000 00		68 724 00	244 000 00	† 175 276 00
1904	8 724 00		60 000 00	$31 780 00	100 504 00	244 000 00	† 143 496 00
Totals	$111 958 00	$448 828 92	$440 000 00	$31 780 00	$1 032 566 92	$2 196 000 00	$1 163 433 00

NOTE.—Stock of Montgomery and Eufaula R'y Co., is worthless and has paid no dividend.
Stock of Eufaula and Clayton R'y Co., was redeemed by Central Railroad & Banking Company of Georgia and $120,000.00 of bonds paid and cancelled, leaving outstanding $4,880,000.00.

Savannah, Georgia, January 18, 1905.

W. D. BYRNE, *Auditor.*

(Exhibit "A.")

73 (The following order appears written upon the back of the foregoing petition.)

(*Order.*)

After hearing the evidence and the argument of counsel; It is ordered that the within application for injunction be denied.

J. T. PENDLETON,
Judge S. C. A. C.

June 14, 1905.

74 (*Answer.*)

GEORGIA, *Fulton County:*

Come now the above named defendants, and without waiving their right to insist upon their demurrer heretofore filed, but expressly reserving said right, and make joint and several answer to so much of said bill as they are advised is material, and say as follows:—

(1.) Defendants admit so much of paragraph one of said petition as alleges, "That on the 27th day of Oct., 1902, William A. Wright, as Comptroller General, issued as execution as alleged," but defendants jointly and severally deny so much of said paragraph as alleges that the issuance of said execution was without authority of law. On the contrary the defendants allege that said *fi fa* was issued in accordance with law.

(2.) Defendants admit so much of paragraph two as alleges that John W. Nelms, Sheriff, made the levy in said paragraph referred to, but defendants deny so much of said paragraph number two as alleges that said levy was made without authority of law.

(3.) Defendants deny the allegations of paragraph three of said petition, and in answer thereto allege that the plaintiff is the real owner of the property assessed for taxes and is liable for taxes assessed thereon.

(4.) For lack of sufficient information, these defendants can neither admit nor deny the allegations of paragraph four of said petition as therein pleaded. These defendants do admit that
75 there was an act passed in 1875, authorizing the Central Railroad and Banking Company of Georgia, and the Georgia Railroad and Banking Company, to purchase the Western Railroad of Alabama, and do admit that only about one-fourth of a mile of said last mentioned railroad is located in the State of Georgia.

(5.) For lack of sufficient information these defendants can neither admit nor deny paragraph five of said petition as the same is therein pleaded; but these defendants do allege that the plaintiff is the owner of 15,000 shares of the par value of One hundred dollars ($100.00) per share, in the stock of the Western Railway of Alabama, and as such owner is liable to be taxed thereon by the State of Georgia.

(6.) For lack of sufficient information these defendants can neither admit nor deny the allegations of paragraph six of said petition; but these defendants do allege that the plaintiff is the real

owner of the stock referred to in said paragraph, and as such owner is liable to taxation of the same.

(7.) Defendants jointly and severally deny the allegations contained in paragraph seven of said petition. Defendants allege that the plaintiff is the real owner of said stock and is liable to taxes thereon under the Constitution and laws of this State.

(8.) For lack of sufficient information these defendants can neither admit nor deny the allegations of paragraph eight of said petition as therein pleaded, but these defendants do allege that the title to said stock is in the plaintiff although it may have been
76 registered on the books of the Western Railway of Alabama, in the name of the Central Trust Company of New York, as Trustee, and they further allege that the plaintiff is liable for taxes thereon.

(9.) For lack of sufficient information these defendants can neither admit nor deny the allegations of paragraph nine of said petition as therein pleaded. But they do allege that the stock therein referred to is property under the laws of Georgia and subject to taxation, and that the plaintiff is the real owner and holder of the same. They further allege that the fact, if it be a fact, that said property is physically beyond the limits of this State, in law, does not exempt the true owner who is a resident of this State, from the taxes due thereon.

(10.) Defendants admit so much of paragraph ten as alleges that the Central of Georgia Railway Company was incorporated under the general railway laws of this State on the 17th day of October, 1895, and further admit that the plaintiff did not acquire any interest in the stock referred to until June 9th, 1896. But defendants deny all and singular and further allegations of said paragraph and allege that. Plaintiff is liable for the tax assessed against said property while it was owned by its predecessor in title. Defendants further submit in answer to paragraph ten, that under the law it is immaterial whether or not said stock referred to therein proved a profitable investment; for that, the real owner is liable for taxes thereon whether the investment proved profitable or otherwise.

77 (11.) Defendants deny the allegations of paragraph eleven of said petition as therein pleaded, and on the contrary allege that the real ownership and title of said stock therein referred to is in plaintiff, and as such owner the plaintiff is liable for taxes thereon. Defendants further deny that the assessments as to the value of said stock is excessive and on the contrary allege that the assessment is fair, just and equitable and according to the true mark*te* value of the property assessed, and defendants specifically deny all the other allegations of said paragraph.

(12.) Defendants deny the allegations of paragraph twelve of said petition, and on the contrary allege that under the Constitution and laws of the State of Georgia, the shares of stock in foreign corporations are liable for taxation by the State of Georgia.

(13.) Defendants deny the allegations of paragraph thirteen of said petition, and on the contrary allege that said shares of stock

therein referred to are taxable under the laws and Constitution of the State of Georgia.

(14.) Defendants deny the allegations of paragraph fourteen of said petition and on the contrary allege that the stock therein referred to is taxable under the Constitution and laws of the State of Georgia, and further allege that the plaintiff has not been deprived of its property without due process of law, and further deny that the plaintiff has been denied the equal protection of the law for that these defendants allege that the plaintiff failed and neglected and refused to make returns of the property referred to in said
78 petition for the purpose of taxation as required by law, and having so failed and refused the plaintiff cannot take advantage of its wrongs, and for that, these defendants allege that the plaintiff was requested by the defendant, William A. Wright, Comptroller General, to make a supplementary return of the specific property referred to, and that the plaintiff failed, neglected and refused to make the return as requested. These defendants allege that had the plaintiff complied with the request to make the supplementary return including the property referred to in the manner and form as requested by the defendant, William A. Wright, Comptroller General, that the plaintiff would have been entitled to have the value thereof assessed according to due process of law within the meaning of the Constitution of this State, and within the meaning of the Constitution of the United States.

(15.) Defendants deny the allegations of paragraph fifteen of said petition as therein pleaded. On the contrary they allege that the Constitution and laws of the State of Georgia require the assessment of taxes against stock of a corporation of the kind and character referred to in the petition.

(16.) Defendants deny the allegations of paragraph sixteen of said petition as therein pleaded, but on the contrary allege that under the Constitution and laws of the State of Georgia, stock of corporations of the character therein referred to are taxable.

(17.) Defendants deny the allegations of paragraph seventeen as therein pleaded. But on the contrary allege that the Supreme
79 Court of the United States has recently decided in the case of the Louisville and Nashville Railroad Company and the Atlantic Coast Line Railway Company *versus* William A. Wright Comptroller General *et al.* that the tax assessed in the case at bar does not violate the Constitution of the United States or the Constitution of this State, and that in assessing said tax the plaintiff was not denied the equal protection of the law within the meaning of the Constitution of the United States.

(18.) Defendants admit so much of paragraph eighteen of said petition as alleges that it is the duty of the plaintiff to make returns in manner and form as therein alleged and that it is further the duty of the Comptroller General to call attention to any false return or any defective return, and that it is the duty of the Comptroller General to notify parties standing in the position of the plaintiff, of any correction that may be decided to be proper to be made in such re-

turns, and that under the law, in the event of a difference of opinion between the corporation making the returns and the Comptroller General, the question at issue shall be submitted to arbitration. But defendants deny the conclusion reached by the pleader in paragraph eighteen of said petition and specifically deny all and singular the other allegations of said paragraph. On the contrary these defendants say that the plaintiff cannot take advantage of its own laches in failing to make returns and further allege that the plaintiff had ample opportunity, on invitation from the Comp-
80 troller General, to make a supplementary return which would include the property in said petition, and having failed to take advantage of the offer *he* permitted to make returns can now not complain of its own wrong.

(19.) Defendants deny all and singular the allegations of paragraph nineteen of said petition. On the contrary they allege that the defendant William A. Wright, Comptroller General, at any time should assess taxes against the property referred to when information had been received by him going to show that such property was taxable.

(20.) Defendants admit the allegations of fact contained in paragraph 21 in said petition to the effect that William A. Wright Comptroller General, intends to insist and demand the taxes for other years be paid on the property referred to therein. But defendants deny that any injury will be inflicted upon the plaintiff by reason thereof, and deny that such injury is irreparable in damages.

(21.) Defendants deny paragraph 22 of said petition as therein pleaded.

(22.) Defendants deny all and singular paragraph 23 of said petition and the subsections thereof.

(23.) Defendants deny paragraph 24 of said petition as therein pleaded and on the contrary allege that the plaintiff in the suit at bar could have had adjudicated its rights in the premises in the litigation referred to in said paragraph.

81 (24.) Defendants deny that the plaintiff is entitled to any of the relief prayed for in paragraph 25 of said petition. On the contrary they allege that the plaintiff has meted out to it every right to which it is entitled under the law. Defendants further allege that the plaintiff has been denied the equal protection of the law and further allege that the execution levied is in accordance with due process of law.

(25.) Having fully answered, these defendants jointly and severally pray that they be discharged with their reasonable cost in this behalf expended.

JNO. C. HART, *Att'y Gen'l.*
JAS. D. KILPATRICK,
Special Att'y for Def'ts.

GEORGIA, *Fulton County:*

Personally appeared before me the undersigned William A. Wright, who after being duly sworn says that the facts stated in the

foregoing answer so far as relates to his acts and doings are true, and so far as they relate to the acts and doings of others he believes them to be true.

WM. A. WRIGHT.

Sworn to and subscribed to before me, this the 23rd day of March, 1905.

W. H. HARRISON, [N. P. SEAL.]
N. P., Fulton County, Georgia.

Filed in office this the 23rd day of March, 1905.

A. B. HARRISON,
Deputy Clerk.

82 (*Amended Petition. Filed April 24th*, 1905.)

GEORGIA, *Fulton County:*

The petitioner amends its petition in the foregoing case as follows:

(1.) Petitioner avers that to single out Central of Georgia Railway Company and to require it to pay back taxes on foreign stock when other citizens of the State of Georgia have not been required to return or pay taxes on similar stock would be a denial of the equal protection of the laws guaranteed by the 14th Amendment of the Constitution of the United States.

(2.) Petitioner shows that the form of questions to be answered by tax payers throughout the State did not require any tax payer to answer as to the number of shares owned in a foreign corporation; and that by the universally received and accepted practice of tax payers and the State, through its taxing officers stock in a foreign corporation was not considered to be taxable in Georgia, and tax payers were neither required to make returns thereof, nor did they in fact make such returns, nor did they pay taxes on such foreign stock, nor have they been assessed thereon.

That petitioner ever since its organization has made returns like all other tax payers and was not required to answer how many shares in a foreign corporation it owned, nor did it return the same, that its returns were accepted, and that the Comptroller General did not, within the sixty days required by statute, make any
83 objection thereto; that during said years, the State itself owned and still owns One hundred and eighty eight (188) shares of the capital of the Georgia Railroad and Banking Company, and the taxing officers of the States therefore knew that the Central Railroad and Banking Company of Georgia was the owner of 15,000 shares of stock of the Western Railway of Alabama, and of petitioner's interest therein that the Georgia Railroad, *being* the owner of the other 15,000 shares of the Western Railway of Alabama, and that with such knowledge petitioner was not required to return the same for taxation, nor were other persons, firms or corporations who owned foreign railroad stock or other similar foreign stock

required to make returns of like stock, nor were they assessed thereon on failure to make returns.

(3.) Your petitioner shows that because it is claimed to be the owner of a large block of such stock, it is a violation of the equal protection of the law to assess it with back taxes thereon when multitudes of other citizens who own similar stock have not returned or been required to return such stock and are not assessed with back taxes thereon.

There is not, and cannot be, any ascertainment of the number of shares of such stock held by those now necessarily unknown, dead or removed from the State nor can any assessment thereon ever be made for years against such unknown, dead or removed owners; that the present attempt to tax petitioner imposes upon it a burden which was purposely omitted — be imposed upon all other
84 owners of foreign stock and denies to petitioner the equal protection of the laws.

Wherefore petitioner says that said execution is void because issued in violation of Section I of the 14th Amendment to the Constitution of the United States, which prohibits the denial to any person of the equal protection of the laws, and is also in violation of Article I, Section I, Paragraph 3 of the Constitution of Georgia (Civil Code 5699), which provides that protection to person and property shall be impartial and complete, and also is in violation of Article 7, Section 2, paragraph 1, of the Constitution of Georgia (Civil Code 5883) which provides that all taxation shall be uniform upon the same class of subjects.

(4.) Petitioner shows that the statutory question propounded to tax payers in making their returns for State taxes did not include therein any inquiry as to the number of shares of foreign stock owned by the person making the return, and that no such property was returned for taxation in Georgia, and the State did not require any return as to such foreign stock or assess taxes thereon.

That by Act approved December 22, 1898, (Acts 1898 P. 36-30) providing for the levy and collection of a tax for 1899-1900, there was, for the first time included in the list of questions an inquiry as to "how many shares of stock did you own on the day fixed for the return of property for taxation issued by corporations located without this State."

85 Your petitioner avers that said question as to stock in foreign Railroads was universally disregarded and treated as inoperative, both by the tax officers throughout the State, and the tax payer, because of the fact, among others that the Supreme Court of Georgia, in the case of Wright, Comptroller General *vs.* Southwestern R. R. Co., 64 Ga., 799, had decided that "stock in railroads without the limits of this state is not taxable here; that stock in a railroad is really so many shares of its property, which property is real estate for the most part, and taxable by the State in which the road is located."

That acting upon such recognized construction of the non-taxability of such stock, no return thereof had been required of tax payers prior to *to* 1898; that said form of question and inquiry

as to the number of shares owned by resident taxpayers in non-resident corporations was not re-enacted in the Tax Acts of 1901 and 1902, nor in the Tax Acts of 1903 and 1904, and that no such questions was answered by tax payers generally throughout the State of said years.

(5.) Petitioner further shows that for the years from 1898 to 1904 as for the years from 1883 to 1898, all taxpayers and the State, through its taxing officers, all alike treated stock in a foreign railroad as not taxable, and even during the years when the statute required such question to be propounded (1899-1900), the said question was not answered by taxpayers, nor did the taxing
86 officers insist upon an answer thereto, nor was any arbitration had or assessment made against taxpayers neglecting, failing and refusing to answer such question or to make return. And petitioner avers that *from* no taxes on foreign stock have been paid or demanded, and no assessment for such property as omitted property has been made.

(6.) Petitioner further shows that in view of the decision of the Supreme Court of Georgia, and the universal acquiescence therein, and action thereon, by the Comptroller General, all state and county taxing officers, and by all citizens and taxpayers it is manifest discrimination and an unequal and partial administration of the law, and a violation of Article I., Section I, Paragraph 2 of the Constitution of Georgia (Civil Code 5699), and also in violation of Art. 7, Sec. 2, Par. 1, of the Constitution of Georgia (Civil Code 5883), which provides for uniformity in the collection of taxes, to assess against petitioner taxes upon such property for years and during the period when similar taxes have not been assessed against other taxpayers holding a similar class of property, and your petitioner further avers, that for the same reason, it would be in direct conflict with Section I of the 14th Amendment to the Constitution of the United States, which provides for the equal protection of the laws.

(7.) Petitioner avers that the said Act of 1898 in so far as it attempts to tax shares of stock issued by corporations located without the State, while not taxing shares of stock issued by corporations located within the State, or chartered by the State of Georgia,
87 is unconstitutional null and void, for that, if shares of stock of railroad companies are taxable property as personal property in the hands of holders thereof, the taxation of such shares when issued by corporations not chartered by the State of Georgia, while shares issued by corporations chartered by said state are not taxed, amounts to a classification of property for the purpose of taxation, and taxes one class of shares, while not taxing the other class, and so violates the Constitution of the State of Georgia, which provides that all taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

(8.) Petitioner further says that for the State of Georgia to recognize as it does railroad shares issued by corporations chartered by the State of Georgia as being mere symbols of the property owned by the

corporation, and as not being taxable property in the hands of the holders of said shares, if it should attempt by the Act of 1898, or any other Act, to classify railroad shares issued by corporations chartered by States other than the State of Georgia, as personal property in the hands of taxpayers in the State of Georgia, it would be a classification of some railroad shares as property, while recognizing that other railroad shares were not property, and as such would be illegal, null and void, and contrary to the provisions of the Constitution of the State of Georgia, last aforesaid.

88 (9.) Petitioner avers that for each of the years since its organization it made a return; that said returns were accepted and that the Comptroller General had no authority to issue said execution which has been levied upon petitioner's property.

(10.) Petitioner further shows that said execution issued without due process of law, and in violation of Section I of the 14th Amendment to the Constitution of the United States; for that the laws of Georgia do not provide for the Comptroller General to issue executions for taxes on omitted property. The law fixes no time or place for the hearing of any question as to the liability of the owner to pay back taxes, nor for the determination of the question as to whether the property alleged to have been omitted is subject to taxation, nor whether it was not property omitted, nor for the hearing of evidence as to the value of said property. Petitioner avers that the law provides for no pleadings, summons, process, service, or notice of the time or place of such hearing, and affords no right or opportunity to the taxpayer to be heard, as to the assessment of such back taxes.

(11.) Petitioner further shows that as a fact no proceeding was ever instituted by or before the Comptroller General for assessing said tax on the 15,000 shares of the capital stock of the Western Railway of Alabama; and no process or notice was ever served upon petitioner, and the law provided no right or method of hearing before said execution issued; no hearing was in fact had, and no evidence taken, and said execution issued without due process of law

89 by the Comptroller General acting *coram non judice*.

(12.) Petitioner therefore says that said execution is null and void as having been issued without due process of law and in violation of Section I of the 14th Amendment to the Constitution of the United States, and also issued without due process of law guaranteed by Article I, Section I, Par. 3 of the Constitution of Georgia (Civil Code 5700).

Wherefore, and to prevent a multiplicity of suits and to avoid filing separate defenses to said execution and the executions which the Comptroller General is threatening to issue for taxes on said stock for previous years, and to remove the said execution as a cloud upon its title, petitioner prays:

(1.) That said execution be declared to be void because issued in violation of section 1 of the 14th Amendment to the Constitution of the United States, as denying to Petitioner the equal protection of the laws.

(2.) That said execution be declared void, because issued without

due process of law in violation of section I of the 14th Amendment to the Constitution of the United States.

(3.) That said execution be declared to be void because issued without due process of law and in violation of Article I, Section I, Paragrapg 3, of the Constitution of Ga., (Civil Code 5700).

(4.) That said execution be declared null and void because issued in violation of Article 7, Section 2, Paragraph 1, of the Constitution of Georgia, which provides for uniformity of taxation, and in further violation of Article I, Section I, Paragraph 2, of
90 the Constitution of Georgia.

LAWTON & CUNNINGHAM,
KING, SPALDING & LITTLE.
Solicitors for Petitioner.

GEORGIA, *Chatham County:*

Before me personally appeared Alexander R. Lawton who being duly sworn deposes and says that he is First Vice President of the Central of Georgia Railway Company, and that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

ALEXANDER R. LAWTON.

Sworn to and subscribed to before me, this April 21st, 1905.
[N. P. SEAL.] GEO. H. RICHTER,
N. P. Chatham Co., Ga.

(*Order.*)

This amendment is ordered filed subject to the right of defendants to demur thereto. This April 24th, 1905.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 24th day of April, 1905.
T. H. JEFFRIES,
Deputy Clerk.

91 (*Answer to Amendment. Filed April* 24, 1905.)

GEORGIA, *Fulton County:*

Come now Wm. A. Wright, Comptroller General, and John W. Nelms, Sheriff, and in answer to the amendment of plaintiff's petition, and in answer to the complaint as amended, jointly and severally say, as follows:

(1.) These defendants deny that the plaintiff has been singled out and required to pay back taxes on foreign stock, and deny that other citizens in the State of Georgia have not been required to return and pay taxes on similar stock, and deny that the plaintiff has been, or is, denied the equal protection of the law,—all is alleged in the first paragraph of said amendment.

(2.) In answer to pargraph 2 of said amendment, these defendants jointly and severally say, that for a part of the time covered by the claim for taxes sought to be enforced, tax payers were required to answer specifically the question as to how much stock they owned in foreign corporations, whose stock was not exempted under the Constitution and laws of the United States, and of this State, that during all of the time covered by the demand for taxes referred to in this petition and amendment, tax payers have answered specifically other questions, and were required to answer under oath a question propounded, as follows: "Value of all other property not herein mentioned?" In addition to said question so propounded, the tax payer was required to make oath, and sign the same in the presence
92 of the tax receiver, or some other person authorized to administer oaths in manner and form as set out in section 834 of Volume I of the Code of 1895; a part of which oath was in words and to the effect that "every species of property that I own in my own right, or have control of either as agent, executor, administrator, or otherwise," was included in the return made. These defendants allege that the questions propounded, if truthfully answered, would have elicited the whole truth as to the ownership of such stock as is taxable under the law, and that the same would have been assessed and taxed in the same manner as taxes have been assessed and levied as against the complainant. The defendant Wm. A. Wright, denies so much of said paragraph as alleges that the plaintiff was not required to answer how many shares of stock are owned in a foreign corporation, and denies that it was not required to return the same. Answering further said paragraph, defendant Wright says that it is true that the plaintiff made returns of certain parts and portions of its property, and that said returns were accepted; but he further alleges that no returns were made by plaintiff of the stock referred to in the original petition and in this amendment, and further alleges that he did not know prior to about May 25th, 1901, that the plaintiff was the owner of the shares of stock now sought to be taxed; and he further alleges that on account of the lack of this knowledge, and on account of the lack of any information that would reasonably lead to this knowledge, said returns as made, though false, in fact, were accepted and no objections were
93 made thereto within sixty days of the filing of said returns, as alleged in said second paragraph of said amendment. Defendants further deny that the taxing officers of the State of Georgia, or any of said officers, knew prior to May 25th, 1901, that the petitioner was the owner of the 15,000 shares of stock referred to in said petition. Answering said paragraph further, defendants say that even to this hour they know of no person or corporation resident of this State owning stock in any corporation whose shares are taxable in this State save only the petitioner and the Georgia Railroad and Banking Company. The said Wm. A. Wright, Comptroller General, in his official capacity stands ready to enforce the law by assessing taxes against every person and corporation resident of this State similarly situated with the complainant in this case, and has

repeatedly instructed the various tax receivers and tax collectors of each and every county in this State, 137 in number, to rigidly enforce the various tax acts assessing all property that is liable for taxation in this State, and especially such property as is treated of in said petition and this amendment. Answering further the allegations in the amendment relative to the form of question directed to the various tax payers of this State, respondent submits that a levy of taxes upon property is not determined nor dependent upon the form of question used by the tax collector or respondent as to this liability for taxation, but that the question of such liability is determined by the Constitution and laws of the State.

94 (3.) These defendants jointly and severally deny all and singular the allegations of paragraph 3 of said amendment. Answering further, they say, that it is not true in fact that multitudes of other citizens own similar stock, and have not returned, and have not been required to return such stock, and have not had assessed against them for taxes thereon. On the contrary, so far as these defendants know or are advised, the only tax payers in default on account of taxes similar to the one here resisted, are the complainant in this case and the Georgia Railroad and Banking Company. In the event it shall be made to appear that other tax payers are in default, and are similarly situated with the plaintiff in this case, the defendant, Wright, stands ready to assess taxes, and to enforce the payment of the same against such tax payers so in default. It is absolutely and unconditionally denied that the tax assessed against this plaintiff was purposely omitted to be imposed upon all other owners of foreign stock. On the contrary, the defendant Wright alleges that he has been diligent in attempting to enforce the collection of taxes against all other persons similarly situated whenever and wherever he had any information upon which to lawfully base an assessment of the same.

(4.) These defendants jointly and severally deny so much of paragraph 4 as alleges that the statutory questions propounded to tax payers did not include any inquiry as to the number of shares of foreign stock owned by the person making the return, and that no such property was required to be returned, and that taxes

95 were not assessed thereon. They further deny all and singular the other allegations of paragraph 4 as hereinafter qualified, that is to say, they admit that the Act of December 22nd, 1898, required these questions to be propounded to tax payers making their returns to-wit. "How many shares of stock did you own on the day fixed for the return of property for taxation issued by corporations located without this State?"

Answering further said paragraph, defendants say, that so far as they know or are advised, the plaintiff in this case and the Georgia Railroad & Banking Company, are the only two tax payers owning stock subject to taxes who failed to make returns as required by law, and further say that if any other person or corporation defaulted and made false returns, that it is no defense in law on the part of the complainant to the demand for the taxes now resisted; for that under the Constitution and laws of this State, adopted and passed

since the decision referred to, such property is taxable in this State, and the taxing officers of the State have exercised due diligence in seeking to enforce taxation of the same, and having sought to so enforce said Constitution and laws as to give every tax payer the equal protection of the law.

(5.) These defendants jointly and severally deny that during the years from 1898 to 1904, and the years from 1883 to 1898, that the taxing officers of the State treated foreign stock in railroads as not taxable; but upon the contrary, the Legislature of this State repeatedly passed laws requiring that all property in this
96 State shall be returned for taxation not specially exempt under the Constitution; and that the Legislature of this State did, as early as the 20 day of Oct., 1885, pass an Act expressly declaring that shares of stock were personal property, and as such liable to taxation at the residence of its owner.

Defendants further answering say that they are not aware of any arbitration resorted to by tax payers involving the value of shares of stock *got* taxation; nor do they know of any tax payers refusing to answer the question as to the ownership of any foreign stock except as now disclosed by this record, and except also the Georgia Railroad & Banking Company, which now objects to paying taxes on like stock owned by it in a foreign corporation.

(6.) These defendants specifically deny all and singular the allegations of paragraph 6 of said petition, and especially deny the allegations by innuendo therein made to the effect that the Comptroller General of the State, and all State and County taxing officers acquiesced in a failure on the part of the tax payers to return and pay taxes upon property of the kind and class referred to in said 6th paragraph of said amendment. Defendants allege that for each year during more than 20 years taxes have been assessed against such property by the proper taxing officers acting under and by virtue of the Constitution and laws of this State, and that so far as these defendants know or are advised, the only tax payers failing and refusing to pay the tax on similar property are the plaintiff in this case and the Georgia Railroad & Banking Company; and
97 that there is now pending litigation the purpose of which is to enforce as against the Georgia Railroad and Banking Company the payment of taxes on its property of like kind and similarly situated. The plaintiff in this petition claims to possess in its sworn allegations knowledge not in the possession of the defendant Wm. A. Wright, as to the owners of stock in foreign corporations, and if this information is imparted to this officer, he will assess and have issued executions against all delinquent tax payers similarly situated, and as to tax payers required to return their property to tax receivers of the county, he will as to such officers demand and direct that they shall proceed to assess taxes against such property, and collect the same.

(7.) Defendants deny all and singular the allegations of fact contained in paragraph 7 of said amendment, and all of the conclusions drawn therefrom by the pleader. Defendants aver that the State taxes all physical property located within the confines of this

State, and further aver that under the Constitution and laws of this State, shares of stock owned by residents of this State in corporations whose physical property is located beyond the confines of this State, are taxable. Defendants further aver that this method of taxation is in spirit the scheme of taxation contemplated by the Constitution and laws of this State; for that they allege that the scheme of taxation contemplated by the Constitution and laws of this State to the effect that every owner of property resident in this State shall pay in taxes in proportion to the value of the property owned; and further allege that the scheme contemplates that wherever
98 a person not a resident of this State owns property that is physically located in this State shall likewise pay in proportion to the value of such property so physically located. In short, the scheme of taxation contemplates equality, and contemplates that in proportion to the protection given, either to the person or the property protected under the laws of this State, taxes must be paid. Defendants deny that the classification referred to in paragraph 7 of said amendment is in conflict with either the letter or the spirit of the Constitution and laws of this State, and further deny that this classification is arbitrary or unjust; but, on the contrary, allege that this taxation is in accordance with the scheme of the Constitution and laws of this State and is uniform within the meaning of the Constitution of this State, and does not deny to the plaintiff the equal protection of the law, as contemplated by the Constitution of the United States.

(8.) Defendants jointly and severally deny the conclusions reached in paragraph 8 of said amendment, and say that it is the scheme of this State to treat both as property, namely, shares of stock in foreign and shares of stock in domestic corporations, and that in the levy and collection of taxes thereon, as to shares of stock in domestic corporations, that when the property of such corporations pays taxes, it is in effect a tax upon the domestic share, but that as to foreign stock, the tax is levied directly against the share or else as to this State, the property would go untaxed.

(9.) Defendants admit so much of paragraph 9 as alleges
99 that for each of the years since its organization, it made return, and that said returns were accepted; but does deny all and singular the other allegations of said paragraph.

Answering further in this behalf, these defendants allege that in the returns made, the property now sought to be taxed was not included, and that at the time of the acceptance of said returns, and for a long time thereafter, the said Wm. A. Wright, did not know and had no reason to suspect that the plaintiff was the owner of the shares of stock now sought to be taxed. And the defendant Wright further alleges that so soon as he was in possession of information to the effect that the plaintiff was the owner of the shares of stock referred to in said petition and amendment, he immediately requested the plaintiff to make a supplementary return including the same, and that the plaintiff refused and neglected so to do, thereby necessitating this defendant, as his official duty, to assess taxes against said stock as against the plaintiff.

(10.) Defendants deny all and singular the allegations of paragraph 10 of said amendment; and answering further, say, that the plaintiff was given opportunity and frequently requested by the defendant Wm. A. Wright, Comptroller General to return said property for taxation, and opportunity was offered the plaintiff to arbitrate the value of the property referred to all of which was refused and declined by the plaintiff.

Wherefore, defendants say that the issuing of said execution was in accordance with the due process of law, the plaintiff having refused to include and make return, or to cause to be arbitrated the value of the property assessed.

(11.) Defendants specifically deny all and singular the allegations of paragraph 11 of said amended petition. On the contrary defendants allege that notice was served upon the petitioner, and petitioner was given ample opportunity to make returns, and to have the value of the property assessed arbitrated, and that petitioner was not denied due process of law.

(12.) Defendants specifically deny all and singular the allegations of paragraph 12 of said amended petition. Defendants further deny that the plaintiff is entitled to any relief prayed for in sub-sections 1, 2, 3, and 4 of said paragraph 12.

JOHN C. HART,
Att'y Gen'l,
J. D. KILPATRICK,
Counsel for Defendants.

GEORGIA, *Fulton County:*

Personally appeared before the officer in and for said State and County whose name is hereto subscribed, and who is by law authorized to administer oaths, W. A. Wright, one of the defendants in the above stated cause, and being duly sworn, upon oath says, that the allegations made in the above and foregoing plea and answer to the amendment filed by the plaintiff in the cause therein stated, so far as the same touches his own act and deed, are true, and so far as the same refers to the acts and deeds of others, he believes the same to be true.

WM. A. WRIGHT.

Sworn to and subscribed before me, this April 26th, 1905.

W. H. ABBOTT,
N. P., Fulton Co., Ga.

Filed in office this the 24th day of April, 1905.

W. H. ABBOTT,
Deputy Clerk.

102 *(Amended Petition.)*

GEORGIA, *Fulton County:*

And now comes the plaintiff, and by leave of the Court, amends its petition heretofore filed in this case as follows:

(1.) Petitioner shows that by the decisions of the Supreme Court of Georgia construing the statutes of said State, it appears that since the year 1885 the law of said State has been that shares of stock in corporations chartered both by the State of Georgia and in corporations chartered by other states, are taxable property and subject to be taxed, and that the equal administration of said laws requires the tax collectors and receivers of the State of Georgia, including the Comptroller General, to levy and collect taxes equally upon all shares of stock, both in domestic and foreign corporations.

(2.) Petitioner avers that said tax collectors, including said Comptroller General, although well knowing that there were a large number of holders of stock in domestic corporations, have knowingly and purposely refrained from collecting taxes upon such shares of domestic stock or from the holders thereof, and that the tax receivers of said State of Georgia, including the said Comptroller General as a tax receiver, have failed and refused to demand the return, or cause to be returned or assessed for taxation shares of stock in domestic corporations against the holders thereof resident in the State of Georgia. That the action of said taxing officers of the State of Georgia aforesaid in regard to domestic stock and the holders
103 thereof, amounts as against your petitioner to a denial of the equal protection of the laws contrary to the 14th Amendment of the Constitution of the United States, and is such denial of the equal protection of the law contrary to said amendment of said Constitution of the United States.

(3.) Petitioner avers that the taxing officers of the State, including the said defendant, William A. Wright as a taxing officer, accepted returns of all property and assessed the value of all property which was assessed by them, of tax payers in said State at not exceeding two-thirds of its market value, and that the said Comptroller General accepts the returns of, and assesses railroad property in this State at not more than two-thirds of its market value, and that such has been and is the practice of said taxing officers and said Comptroller General since the year 1895 and before said time, and that said assessments and acceptances of returns for taxation as set forth at two-thirds of its market value is done knowingly, purposely and intentionally by the said taxing officers, including said Comptroller General.

That the said shares of stock in said Western Railway of Alabama which have been assessed for taxation against your petitioner by the said William A. Wright, Comptroller General and as to which he is now endeavoring to collect taxes for the years from 1895 to 1905 inclusive, are assessed at exceeding their full market value said amount assessed being shown by Exhibit "A" to this amendment,

and your petitioner avers that the said assessments are at
104 least — per cent. over and above the market value of said stock for each and every year.

(4.) Petitioner shows that the action of said William A. Wright in assessing at said sums set forth in said Exhibit "A" the said stock of said Western Railway of Alabama, which taxes are claimed against your petitioner by the said William A. Wright and the other taxing officers of said State, and assessing for taxation the other property of said State, and especially the railroad property of said State, at not exceeding two-thirds of its market value approximately, under the acts herein set forth is a denial to your petitioner of the equal protection of the law; contrary to the 14th Amendment of the Constitution of the United States.

(5.) Petitioner shows that since the said filing of the original petition in this case the said Comptroller General has carried out the purpose alleged in paragraph 21 thereof, and that the said Comptroller General did on or about the 23rd day of January 1906 assess as against your petitioner the said 15000 shares of stock in the Western Railway of Alabama, at the several valuations, and levy taxes thereon at the several amounts, for the years 1895 to 1905 inclusive, as are set forth in a table hereto attached showing said several assessments for each of said years, which said table is marked Exhibit "A" and is hereby made a part of this paragraph of this petition, and that the said William A. Wright, Comptroller General, has issued an execution for each of said years for the amount assessed as taxes for such years, with interest
105 thereon from the 20th day of December in each of said years, and has placed, or is about to place the same in the hands of John W. Nelms, Sheriff of Fulton County, to be levied upon the property of your petitioner.

(6.) Petitioner shows that the market value of said shares of stock of the Western Railway of Alabama upon which said taxes have been assessed against your petitioner, has been in each of said years as per list hereto attached, marked Exhibit "B" and made a part of this paragraph of this petition.

(7.) Petitioner further avers that each of said executions is illegal and invalid, for the several reasons set forth in its original petition in respect to said execution issued for taxes for the year 1900, as therein set forth. Petitioner further shows that the said taxes claimed to be levied for the year 1895 and 1896 are invalid, for that this petitioner was not the owner of nor did it possess any interest in the said shares of stock of the Western Railway of Alabama during the said year 1895, nor did it acquire any interest therein until the 9th of June in the year 1896 when it purchased its interest therein from Samuel Thomas and Thomas F. Ryan, Residents of the State of New York, and that, therefore, said taxes are not a lien upon, and should not be collected out of this defendant.

(8.) Petitioner further shows that as to the said executions issued for taxes for the years 1903, 1904, and 1905, the same have

been levied and assessed, and said executions issued, and are proceeding illegally for the further reason that from the 22nd day of December, 1902, to the 10th day of Feb. 1905, your
106 petitioner and the said Comptroller General were enjoined from taking any steps to return or pay said taxes, and the said Comptroller General from levying the same, said injunction being issued by the United States Circuit Court for the Northern District of Georgia in the case of the Central Trust Company of New York *vs.* William A. Wright *et al.*, and that since the 10th day of Feb. 1905 said William A. Wright as such Comptroller General has been restrained by orders in this cause from taking any steps to enforce said taxes or executions issued for the same, which orders have remained of force until the 22nd day of January 1906, that by reason of said orders, the time within which your petitioner was required to return, or the said Comptroller General was at liberty to receive, tax returns for the years 1903, 1904 and 1905, as to the said 15,000 shares of stock, has been extended, and that your petitioner had the same time after the said 22nd day of January, 1906 as to each year within which to make a return of said shares of stock for said year, that it would have had in said year had said restraining orders not been in force; that it would have had at least three months in each of said years within which to make said return for such year, and that it is therefore not in default, and was not in default in not making a tax return of said shares of stock in said years, and the said Comptroller General was without authority to assess the same against your petitioner in said years, or against it as a defaulter, or issue any executions therefor on said 23rd day of January 1906.

LAWTON AND CUNNINGHAM,
ALEX. C. KING, *Compt's Col's.*

107 (EXHIBIT "A.")

Statement of Assessments Made by the Comptroller General of Georgia on the 15,000 *Shares of Stock of the Western Railway of Alabama for Taxation, Beginning with the Year* 1883, *to the Year* 1904.

	Value.	Tax rate.	Tax.
1895	900,000	4.56 mills	4,104.00
1896	1,050,000	4.56 "	4,788.00
1897	1,400,000	5.21 "	7,294.00
1898	1,100,000	6.21 "	6,831.00
1899	1,450,000	5.36 "	7,772.00
1900	1,450,000	5.20 "	7,540.00
1901	1,600,000	5.44 "	8,704.00
1902	1,950,000	5.30 "	10,335.00
1903	2,200,000	5. "	11,000.00
1904	2,200,000	4.80 "	10,560.00

(EXHIBIT "B.")

Values of Stock of Western Railway of Alabama for Years —.

Years.	Value per share.
1895	$25.00
1896	25.00
1897	40.00
1898	45.00
1899	25.00
1900	25.00
1901	60.00
1902	70.00
1903	80.00
1904	90.00
1905	90.00

(*Order.*)

Foregoing amendment allowed. Jan. 30th, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 29th day of Jan., 1906.

T. H. JEFFRIES,
Deputy Clerk.

108 (*Amended Answer.*)

GEORGIA, *Fulton County.*

And now comes the defendants in the above stated case and amend their answer heretofore filed, and in response to paragraph 1 of the amended petition of complainants this day filed, answer and say:

(1.) It is true that the Act of 1885 of the General Assembly of Georgia as construed by the Supreme Court of Georgia authorized and demanded that a tax be levied against stock held by residents of the State of Georgia in corporations whose physical property is located beyond the limits of the State of Georgia, otherwise than herein admitted, said paragraph is denied. The Supreme Court of Georgia in the decision referred to by petitioner in its said paragraph 1 held as follows:

"The failure of the taxing authorities to directly tax shares of stock in domestic corporation, whose property is located in Georgia as property in the hands of the shareholders (the corporate property being taxed instead), while levying a direct tax upon shares of stock in foreign corporations whose property is outside the State belonging to citizens of Georgia, is not a denial to the holder of the foreign shares of the equal protection of the laws."

The Supreme Court in the same decision further holds, as follows:

"It is not in this case necessary to determine whether shares of stock in a domestic corporation in the hands of a stockholder
109 are required to be taxed as such in order to comply with the uniformity of the Constitution. Nor is it necessary to determine, if domestic shares are taxable, whether it would be double taxation to assess them for taxation in the hands of the shareholder and also include them in the return made by the president of the corporation as required by law."

(2.) Answering paragraph two. it is not true under the laws of Georgia that the taxing authorities have exempted domestic shares and required foreign shares to be taxed, but on the contrary the officers have taxed both by levying the tax directly upon the foreign shares and upon the domestic shares by levying the tax on the property of the corporation. In doing this it is denied that the action of said taxing officer is a denial of the equal protection of the laws as contemplated by the 14th Amendment of the Constitution of the United States.

(3.) Answering paragraph 3 of the petition defendants say, it is denied that it is the practice of the taxing officers of this State to receive property, corporate or individual, at two-thirds of its market value. On the contrary it is the practice of the officers of this State, as well as the requirement of the Constitution and law of this State, that all tax payers shall return their property for taxation at its true market value. It is specifically denied that the shares of stock in the Western Railway of Alabama, which have been assessed for taxation against petitioners by the said Wm. A. Wright, Comptroller General, and from 1895 to 1905 inclu-
110 sive, are assessed at exceeding their full market value. It is further denied that the valuation set up and claimed by the petitioners in said amended petition and exhibits thereto, is the true and correct market value of said stock for taxation, but on the contrary allege that the true market value of the same is that which has been fixed by the Comptroller General, as set forth in the executions issued therefor.

(4.) Answering paragraph 4 it is denied that defendant, Wm. A. Wright, Comptroller General, has assessed the property of the petitioner at its full value and the other property of the State, including railroad property, at two-thirds of its value.

(5.) Answering paragraph 5 the allegations are admitted, except it is untrue that taxes have been assessed and that an execution has issued for the year 1905.

(*g.*) Answering paragraph 6 defendants deny that the list thereto attached marked Exhibit B, in which petitioner alleges that the valuation placed therein on the Western Railway of Alabama, is the true market value of said stock, but on the contrary the true market value of said stock is as assessed by the Comptroller General, and pray that the Court may so find and decree.

(7.) Answering paragraph 7 defendants deny that the executions issued are invalid, but on the contrary allege that the same are

valid. The allegation that taxes have been assessed and executions issued for the year 1895 is untrue.

(8.) Answering paragraph 8, it is true as alleged, in said
111 paragraph that on the 22nd day of December 1902, the Central Trust Co., of New York, instituted a proceeding in the Federal Court for the Northern District of Georgia, wherein the Central Trust Co., set up that it had certain equitable interests in the property of the Central of Georgia Ry. Co., and by reason of diverse citizenship sought and claimed jurisdiction to be in the Federal Court. In this petition the Central Trust Co. alleged that the Central of Georgia Ry. Co. was about to return this property for taxation and it was prayed by said Trust Co., that Wm. A. Wright, Comptroller General, should be restrained from assessing this property and that the Central of Georgia Ry. Co. should be restrained and enjoined from returning the same for taxation. Subsequently, to-wit, on Feb. 10th, 1905, the Central of Georgia Ry. Co., filed a petition to this court in which it alleged that the Central Trust Co. of New York had withdrawn its said litigation in the Federal Court without any decree or decision being rendered thereon, and that it was now in a position to litigate the questions which it now raises and are herein involved, and that it now institutes "its equitable petition in the premises." While therefore, admitting in a sense the fact as alleged by petitioners, it is denied that any such conclusion results as claimed by petitioners, either under the law or the fact. It is now charged by defendants that the purpose of making the Central of Georgia Railway Co. a party to the litigation was for the sole object of giving jurisdiction to the Federal Court and this allegation is supported by the subsequent conduct of the present plaintiff
112 in this litigation. In the light of these facts and especially in a court of equity, wherein it is required that the petitioner himself must do equity, or offer to do equity, it is respectfully submitted that it would be unconscionable to permit the petitioner to now claim a benefit under the statement of fact that "he was about to return that property" when he in point of truth had no purpose of doing so, but upon the contrary did not intend to do so as is evidenced by the fact that when the Central Trust Co., dismissed its bill it adopted the allegations in that petition and instead of returning its property as it was charged it had threatened to do, it has litigated the question of its liability from Feb. 10th, 1905 until this present hour. During this time, to-wit: at least from Feb. 10th, 1905, it has had an opportunity to return this property for taxation as was its duty to do and its omission to do so has been intentional, the instance being that there was no law in Georgia which taxed its property, and even to this hour it so insists and refuses to return the property for taxation.

Having fully answered the allegations in said amended petition defendants pray that they be discharged with their reasonable costs.

JNO. C. HART,
Att'y Gen'l.
J. D. KILPATRICK,
Special Counsel for Def'ts.

GEORGIA, *Fulton County:*

Personally appeared Wm. A. Wright, who being sworn upon oath says that the allegations of the foregoing plea and answer are true as therein pleaded.

WM. A. WRIGHT.

113 Sworn to and subscribed before me, this the 30th of Jan. 1906.

N. C. TOLBERT,
N. P., Fulton Co., Ga.

The above amendment in answer to the amendment to the petition of this date is hereby allowed.
January 30th, 1906.

J. T. PENDLETON,
Judge S. C., A. C.

Filed in office this the 30th day of Jan. 1906.
T. H. JEFFRIES, *Deputy Clk.*

114 *(Consent Order.)*

By consent of counsel, it is ordered that this cause be tried by the Court without a jury with all right of exception and appeal or writ of error as if tried by the Court with a jury—including the right to move for a new trial if deemed necessary or proper.
Jan. 30th, 1906.

J. T. PENDLETON,
Judge S. C., A. C.

115 *(Decree of Jan. 30th,* 1906.)

The above stated case having come on regularly to be heard and counsel of record for both sides having consented that same be heard by the Court, without the intervention of a jury, on both the law and the facts, and after hearing and considering all the evidence submitted I find as follows on questions of fact.

(1.) The evidence submitted does not disclose any discrimination in the assessment of taxes on the stock in controversy as compared with other property of the State.

(2.) The evidence submitted does not show that the value of the Stock as assessed by the Comptroller General is excessive.

(3.) I find in favor of defendants generally.

Therefore it is ordered, considered and decreed by the Court that the several *fi. fas.* issued by the Comptroller General of Georgia, Wm. A. Wright for the years 1897, 1898, 1900, 1901, 1902, 1903, 1904 and 1905 against Central of Georgia Railway Company and in favor of the State of Georgia, do proceed.

It is further ordered that the State of Georgia recover of Central

of Georgia Railway Company the costs of this proceeding to be taxed by the Clerk of this Court.

This Jan. 30th, 1906.

J. T. PENDLETON,
Judge S. C., A. C.

116 (*Motion for New Trial.*)

GEORGIA, *Fulton County:*

The above stated case having been tried before the Court without the intervention of a jury under a consent order passed therein January 30th, 1906, and a decree having been rendered therein in favor of the defendants in said case, and the plaintiff being dissatisfied therewith, now comes the said plaintiff during the said term of court at which the said decree was rendered and within thirty days from the rendition thereof, and moves the court to grant a new trial in said cause upon the following grounds, to wit:

(1.) Because the said decree is contrary to law.

(2.) Because the findings in said decree are contrary to the evidence in said cause.

(3.) Because the findings in said decree are without evidence to support them.

(4.) Because the said decree is decidedly and strongly against the weight of evidence in said cause.

(5.) Because the evidence submitted in said cause does disclose discriminations in the assessments and levies of taxes on the stock in controversy in said cause compared with other property in the State which is taxed for each and every one of the years for which the tax *fi. fas.* sought to be enjoined in said cause are directed to proceed.

117 (6.) Because the evidence submitted in said cause shows that the value of the stock placed thereon by the Comptroller General is excessive, and causes said stock to be taxed to your petitioner at a valuation which is greatly in excess of the valuations placed upon the other property taxed in said State.

(7.) Because the Court erred in finding generally in favor of the defendants under the facts of said case.

(8.) Because the Court erred under the facts of said case in directing that the *fi. fas.* for taxes in favor of the State against the Central of Georgia Railway Company, for the years 1897 to 1905 inclusive do proceed, and in not perpetually enjoining the said *fi. fas.* and each of them from so proceeding.

(9.) Because movant insists it appears from the evidence that no shares of domestic stock, or of stock in domestic corporations is taxed or assessed by the Comptroller General and other taxing officers of the State of Georgia, and that the shares of stock of the petitioner in the Western Railway of Alabama are taxed; that under said facts and the law of this State such taxation of such shares to your petitioner while said shares of domestic stock are untaxed is a discrimination against your petitioner contrary to the

Constitution of the State of Georgia, (Art. 7, Sec. 2, Par. 1) which requires that all property within the territorial limits of the authority levying the tax subject to be taxed shall be taxed under uniform laws; and further contrary to Article One Section One Paragraph Two of said Constitution which provides that pro-
118 tection to property shall be impartial and complete.

(10.) Because movant insists it appears from the evidence in said case that foreign shares of stock are held by citizens of Georgia other than your petitioner and the Georgia Railroad and Banking Company, and that no such holders of foreign shares of stock have been taxed by the taxing officers of said State, but that your petitioner and the said Georgia Railroad and Banking Company alone have been taxed upon the shares of stock which they hold in the Western Railway of Alabama; that such action on the part of the taxing officers of said State is knowing and intentional, and is a discrimination against said petitioner and denies to it the equal protection of the laws, in violation of the 14th Amendment of the Constitution of the United States.

(11.) Because movant insists it appears from the evidence in said case that the railroad property and other property returned and assessed for taxation in said State of Georgia is accepted for taxation by the taxing officers of said State at at least one third below its fair market value, and that the stock of the Western Railway of Alabama involved in this case is taxed by defendant, Comptroller General, without and deduction from what the said defendants claim to be its fair market value; that such action on the part of said defendants is a discrimination against petitioner and denies to petitioner the equal protection of the laws in violation of the 14th Amendment of the Constitution of the United States.

(12.) Because movant insists it appears from the evidence
119 in said case that the railroad property and other property in said State returned and assessed for taxation is not taxed upon any valuation exceeding its market value, and that the stock of the Western Railway of Alabama in controversy in this case was taxed to your petitioner by the said Comptroller General at at least Seventy five (75%) per cent, above its market value; that this action on the part of the Comptroller General is a discrimination against your petitioner and denies to it the equal protection of the laws in violation of the 14th Amendment of the Constitution of the United States.

(13.) Because movant insists the evidence shows that the railroad property and other property in this State which is returned and assessed for taxation is knowingly and intentionally accepted by the taxing officers of said State at at least one-third below its fair market value, and that the shares of stock of the Western Railway of Alabama which are taxed to your petitioner are taxed by the said Comptroller General at at least seventy five (75%) per cent., above its fair market value; that such discrimination on the part of the said Comptroller General is a discrimination against petioner, and denies to it the equal protection of the laws, contrary to the 14th Amendment of the Constitution of the United States.

(14.) Because movant insists it appears from the evidence that the Comptroller General in valuing the railroad properties in said State for taxation adopted as the method of finding said valuation the capitalization of the net earnings of said railroads on
120 the basis of six per cent., and of deducting therefrom approximately one-third of the value thus found, for the purpose of arriving at a proper valuation of said railroads for the purpose of taxation; that the Comptroller-General in order to ascertain the value at which he should assess the stock of the Western Railway of Alabama for taxation adopted the same method, to-wit; capitalizing the earnings of the Western Railway of Alabama for each year at six per cent., deducting therefrom the bonded indebtedness and treating the remainder as the valuation of said stock; that the said Comptroller-General made no deduction of one-third or any other sum, from the said valuation thus found, but assessed said stock without deduction at said valuation; that the said Comptroller-General in so doing, and by so doing knowingly and intentionally discriminated against petitioner as the owner of one-half of said railroad stock in assessing the said stock for taxation; that the same was a discrimination against your petitioners as compared with other tax payers, and that the same discriminates against petitioner and denies to it the equal protection of the laws contrary to the 14th Amendment of the Constitution of the United States.

(15.) Because movant insists under the evidence introduced in said cause it appears that the assessments in controversy were made and the executions based thereon were issued without due
121 process of law in violation of the provisions of the 14th Amendment of the Constitution of the United States, for that the law under which the said Comptroller-General assumed to make said assessments and issue said executions fixes no time or place for the hearing of any questions as to the liability of petitioner to pay back taxes, nor for the determination of the question as to whether such property alleged to have been omitted was subject to taxation, or whether it was properly omitted nor for the hearing of evidence as to the valuation of said property, and affords no notice of the time or place for any hearing, and affords no right or opportunity for the tax-payer to be heard as to the assessment of said back taxes.

(16.) Because movant insists the evidence in this case shows that the said petitioner made its tax returns for each of the years involved in this case in good faith, and that the Comptroller-General accepted said returns; and for the Comptroller-General thereafter without any process of law to tax petitioner for said years on its property omitted in good faith from the *proor* accepted returns was to deprive petitioner of its property without due process of law in violation of the 14th Amendment of the Constitution of the United States.

(17.) Because the Court erred in not enjoining the said executions from proceeding for interest from the 20th day of December, for each and every one of the years for which the said taxes were alleged to be due, as in no event could interest have been calculated except
122 from the date when the said property was legally assessed for taxation, and the amount of taxes due thereon was ascertained by said Comptroller-General.

(18.) Because movant insists it appears from the evidence in said case that the Central of Georgia Railway Company is not the owner of the 15,000 shares of stock in the Western Railway of Alabama which are sought to be taxed against it by the assessments and executions sought to be enjoined by this petition, and the amendments thereto, but that the same is the property of the Central Trust Company of New York, and has been during all the years involved in this litigation. That the taxation of said property by the said State of Ga., for the said years is an attempt to tax property the situs of which is outside the State of Georgia, and said taxation is therefore, in violation of the Constitution of the United States and of the 14th Amendment thereof, in that it attempts to deprive the petitioner of its property without due process of law, and deny to it the equal protection of the laws.

(19.) Because movant insists it appears under the evidence in said case that the only interest which petitioner has in said shares of stock is an equitable, reversionary interest, subject to the legal title and possession of the Central Trust Company of New York, and the equitable interest of the bond holders who are the *cestius que trustent* of said Central Trust Company of New York, and
123 that the attempt to — collection *to* this petitioner out of its property of taxes upon the value of said shares of stock, as an entity, is an attempt to take the property of your petitioner without due process of the laws, contrary to the Constitution of the United States and the 14th Amendment thereof.

(20.) That the assessments of the said shares for taxation against this petitioner is an effort on the part of the taxing officers of the State of Georgia, to tax it on property in which it insists the evidence shows it *wons* only an equitable, reversionary interest, as above stated, and there is nothing in the laws or Constitution of the State of Georgia, which provides for taxation, and the attempt to assess it is an effort to deprive petitioner of its property *of its property* without due process of law, contrary to the Constitution of the United States, and of the 14th Amendment thereof.

(21.) Because the Court erred in not enjoining the executions for taxes for the years 1903, 1904 and 1905, issued against this petitioner, for that the said executions issued *a* prematurely movant insists appears by the evidence in said case, that petitioner was enjoined from making any returns and the Comptroller-General from taking any steps to enforce the collection of taxes on said stock from the
124 22 day of Dec., 1902, to the 10th, day of Feb. 1905, by a decree of the United States Circuit Court for the Northern District of Ga., in the case of the Central Trust Company of New York *vs.* William A. Wright and the Central of Georgia Railway Company, and that the said Comptroller-General has been enjoined by the orders of this Honorable Court in this case from taking any steps to enforce said taxes, or to issue executions thereon from and including said 10th day of Feb., 1905, to the 22nd, day of January, 1906. That petitioner insists that during all said period of time from Dec., 22nd, 1902, to January 22nd, 1906, it was not required to make nor was said Comptroller-General authorized to receive any returns for

said taxes upon said shares of stock of the Western Railway of Alabama, and that said time should not be computed in determining whether or not this petitioner is in default, and that said petitioner has the same time after the 22nd, day of Januay 1903, 1904 and 1905, that it would have had in said years respectively had said orders and decrees not been rendered, and that said time had not expired within which it had the right to make said returns when said assessments were made and said executions issued for said several years.

(22.) Because the Court erred in not enjoining said executions for the years 1897 to 1905 inclusive from proceeding for in-
125 terest from the 20th, day of Dec., for each and every year for which the assessments were made and executions issued. The error being that interest did not run and under the law could not run except from the date of assessment and the date when the amount of taxes had been ascertained and an assessment made.

Upon each and every one of which said grounds petitioner moves the Court to grant a new trial and that a rule *nisi* do issue calling upon the defendants at a time and place to be fixed by the Court to sow cause why the said motion should not be granted.

LAWTON & CUNNINGHAM,
ALEX. C. KING, *Movant's Att'ys.*

We acknowledge due and legal service of the foregoing motion for a new trial and waive copy also waive the issuance of a rule *nisi*, and consent that the Court may pass upon the same immediately.

This 2nd day of Feb. 1906.

JNO. C. HART.
J. D. KILPATRICK.

The grounds of the foregoing motion are approved, and upon consideration of the said motion the same is denied. In open court, this 2nd day of Feb. 1906.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 2nd day of Feb., 1906.

T. H. JEFFRIES,
Deputy Clerk.

126 *(Brief of Evidence.)*

Superior Court of Fulton County, Georgia, January Term, 1906.

CENTRAL OF GEORGIA R'Y CO.
vs.
WILLIAM A. WRIGHT, Comptroller-General of Georgia, *et al.*

Equitable Petition for Injunction. Decree for Defendant. Motion for New Trial by Plaintiff.

The following is a brief of the material portions of the eveidence submitted on the trial of the above stated case.

Where affidavits or their contents are set out herein they were used by consent of both parties in open court, with the same effect as if the witness had appeared on the stand.

The following are the material parts of the evidence introduced by Plaintiff:

1. A certain indenture dated May 2nd, 1887, from Central Railroad & Banking Company of Georgia to Central Trust Company of New York to secure an issue of $5,000,000 of bonds, each for $1,000, of like date, due May 1st, 1937, bearing interest at the rate of 5 per cent. per annum, payable semi-annually.

Each of said bonds recited:

"This bond is one of a series of bonds, five thousand in number, each of a like amount, date and tenor, aggregating five mil-
127 lion dollars, numbered consecutively from number one to number five thousand, both inclusive, and mentioned in and secured by and subject to the provisions of a certain deed of trust bearing date the second day of May, one thousand eight hundred and eighty-seven, executed and delivered by said Railroad & Banking Company to the Central Trust Company of New York, of certain bonds and stocks in the said deed of trust mentioned and described, owned by said Railroad & Banking Company."

The portions of said indenture material to the case are substantially as follows:

"The said part- of the first part, in consideration of the premises and for the purpose of securing the payment of the principal and interest of the said five thousand bonds, according to the tenor thereof; and in further consideration of the sum of one dollar to it in hand duly paid by the said trustee at and before the insealment and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, conveyed and delivered, and by these presents does grant, bargain, sell, assign, transfer, convey and deliver unto the said trustee, and to its successors in the trusts of these presents, the following described stock and bonds, namely:"

128 The stocks and bonds include, as mentioned therein:
Fifteen thousand shares of the capital stock of the Western

Railway of Alabama, at the par value of one hundred dollars per share.

"To have and to hold all and singular the stocks and bonds above mentioned and described, unto the said trustee, its successors and assigns, in trust nevertheless, for the equal and pro rata use, benefit and security of the several holders for the time being, of the bonds intended to be secured hereby, without preference or priority, and subject to the following terms, conditions, covenants and agreements, that is to say:

The voting power belonging to all and every of the bonds and stocks hereby conveyed shall be exercised by the party of the first part, its successors or assigns, by means of proper proxies, which shall be given to it or them, or to its or their appointees, by the said trustee, whenever demanded, so long as there shall be no default in the payment of the interest of the bonds hereby secured; but such voting power shall at no time be used or exercised so as to permit or authorize any lien security or charge to be executed upon the property and franchises of any of the corporations mentioned in the list hereinabove contained or of such other corporations whose bonds may hereafter become part of this trust as hereinafter provided, superior to the liens now existing thereon, or to the lien or preference of these presents or of the securities mortgaged hereby, nor
129 any lien or incumbrance other than now exists unless in the opinion of the trustee the same shall not impair the value of the bonds hereby secured, and such trustee shall assent thereto in writing; provided, however, that any liens or charges at present existing upon the property and franchises of said corporations may be extended or renewed or new liens and charges equivalent thereto may be made and created in lien thereof respectively, with the consent of said Trustee expressed in writing. The said trustee shall also, whenever required by the party of the first part, assign and transfer to the persons designated by said party such number of shares of the stocks herein conveyed as may be necessary for the qualification of the directors of the respective corporations represented by such stocks. The party of the first part shall also be entitled to receive from the said trustee all of the interest coupons maturing upon the bonds and all of the money dividends payable upon the stocks herein conveyed, as well as the interest coupons upon the bonds or the interest which may be earned upon the money substituted in lieu thereof under the provisions of clause second of this indenture, unless and until default be made by said party in the payment of any interest upon the bonds secured hereby; it being expressly provided that in the event of such default being made, the said trustee shall collect all interest
130 maturing and all dividends payable upon the bonds and stocks herein conveyed, for the further security of the bonds secured hereby, and shall from time to time apply such interest and dividends to the payment of interest on the bonds secured hereby in the order in which the same shall fall due, and shall retain the remainder thereof, provided that no coupon shall be paid in part.

It is expressly agreed that for all purposes of this indenture, the

bonds and stocks herein conveyed are of the respective prices and values as follows:

Par value.	Bonds and stocks conveyed.	Denominations.	Valuations for purposes of this agreement.
$1,995,000	Ocean S. S. Co. .... .Stock....	250	$4,987,000
1,500,000	W. R'way of Alabama .. .. "	75	1,125,000
614,000	Mont. & Eufaula R'way .... " ..	120	736,800
145,400	Atlanta & W. Pt. R. R. .. .. "	100	145,400
100,000	Eufaula & Clayton R'way ..... "	120	120,000
1,460,000	Port Royal & W. C. R. R. Co., 1st M. Bonds..... "	100	1,460,000
$5,814,400	....	.....	$8,574,200

And it shall be lawful for the said party of the first part, its successors or assigns, to withdraw at any time from the operation of this indenture and from the possession of the said trustee
131 the whole of any particular class of said bonds and stocks of such portion of any of the same as shall leave in the hands of the said trustee a majority of the entire issue of each particular class of such bonds or stocks where such majority has been pledged hereby, by the payment to the said trustee of a sum of money equal to the values as hereinabove fixed for the purpose of this Agreement, of the bonds or stocks so to be withdrawn.

The said trustee is hereby authorized and empowered to use all or any portion of the stocks and bonds hereby conveyed to acquire the ownership of the respective corporations of which they are, or form a part of the capital stock, or upon which they are secured by mortgage, whenever by reason of foreclosure proceedings or otherwise the protection of the said stocks and bonds requires them to be so used, it being hereby expressly agreed that any stocks or bonds which may accrue to the stocks or bonds so used by reason of any reorganization of the respective corporations, shall remain to the said trustee in place and stead of the stocks and bonds so used, subject to all the terms and provisions of this indenture as though they had been originally conveyed herein; provided, however, that said trustees shall not institute nor join in any foreclosure proceedings against any of the said corporations without the written consent of the party of the first part, its successors or assigns.

132 The said party of the first part covenants and agrees for itself and its successors to and with the said trustee and its successors in this trust, that the said party of the first part shall and will at any time or times hereafter, and from time to time, execute, acknowledge and deliver under its corporate seal to the said trustee and its successors in this trust, all such further assurances, deeds mortgages, transfers, indentures and instruments

in writing, and shall and will do all such further acts and things as shall or may be necessary or proper for the effectual transfer to and vesting in said trustee of the full ownership and possession of the stocks and bonds herein assigned and conveyed and those which may from time to time be substituted therefor.

Upon the payment in full or redemption of the outstanding bonds hereby secured with the interest that shall have accrued thereon, the said trustee shall, without unreasonable delay, transfer, assign, reconvey and deliver to the said party of the first part, its successors or assigns, whatever of the bonds and stocks herein conveyed or acquired under the provisions hereof, and of moneys derived through the execution of the trust hereby created, may then remain in the possession of the said trustee.

The indenture was signed under seal, in duplicate by both parties.

133 GEORGE SHERMAN of New York, testified:—

That he is Vice-President of the Central Trust Company of New York; that the attached paper marked Exhibit "A" is a true and correct copy of the script for fifteen thousand shares of the capital stock of the Western Railway of Alabama held by the Central Trust Company of New York under the certain deed of trust executed and delivered on the 2nd day of May 1887 by the Central Railroad & Banking Company of Georgia to the Central Trust Company of New York to secure an issue of five million dollars in bonds, bearing interest from the same date, and due on the first day of May, 1937; that said certificate has been in actual custody and possession of the Central Trust Company of New York in the city of New York ever since the date of said certificate, and that the same is now in its actual custody and possession in the city of New York, and has always been so held by it since the original delivery thereof to it under the said deed of trust; and the said certificate has not been since said time, or at any time, in the custody or possession of the said Central Railroad & Banking Company of Georgia or its successors in interest or estate, or within the limits of the State of Georgia.

All dividends on the said 15,000 shares of the capital stock of the Western Railway of Alabama are and have been paid by the
134 Western Railway of Alabama direct to the Central Trust Company of New York, and that since the year 1896 the dividends declared on said stock have been paid by the Central Trust Company of New York over to the Central of Georgia Railway Company, it being the common practice of the Central of Georgia Railway Company, whenever said dividends are declared and paid to the Central Trust Company of New York by the Western Railway of Alabama to direct the Central Trust Company of New York to deposit the dividends so paid to the said Central Trust Company of New York in Guaranty Trust Company of New York to the credit of the Central of Georgia Railway Company.

Said certificate of stock referred to as Exhibit "A" is substantially as follows:

This certifies that Central Trust Company of New York, is proprietor of fifteen thousand shares in the capital stock of the Western Railway of Alabama, on which one hundred dollars per share have been paid.

Montgomery, Ala., Aug. 8th, 1887.

L. P. GRANT, *President.*
H. M. ABBOTT, *Secretary.*

(*a.*) A petition of H. M. Comer as receiver of Central Railroad & Banking Company of Georgia to the Fifth Circuit Court
135 of the United States for the Southern District of Georgia in the consolidated causes of Rowena M. Clarke, and others, *vs.* Central Railroad & Banking Company of Georgia *et al.* and the Central Railroad & Banking Company of Georgia against the Farmers' Loan & Trust Company, of New York, *et al.* for leave to borrow from H. B. Hollins & Company, as Manager and Agents of a New York Syndicate, a sum of money not less than Five Hundred Thousand ($500,000.00) Dollars, nor more than One Million Dollars to be secured in part by Fifteen Thousand (15,000) shares of the capital stock of the Western Railway of Alabama, subject to a previous pledge to the Central Trust Company of New York to secure Five Million Dollars on collateral trust bond dated May 2nd, 1887, and the order granting the said petition, petition and order both being dated January, 10th, 1893.

An agreement dated the 19th day of January, 1893, made and entered into in pursuance of the foregoing petition and order between H. M. Comer as Receiver of the Central Railroad & Banking Company, party of the first part, the Mercantile Trust Company, as Trustee, party of the second part, and H. B. Hollins & Company as General Agents, and Attorneys in fact of a Syndicate of Lenders, parties of the third part, the material parts of which agree-
ment are substantially as follows:

136 The Syndicate agrees to loan the said Receiver Six Hundred Thousand ($600,000.00) Dollars on the terms hereinafter stated.

The Receiver agrees to repay the said loan on the 1st day of July 1903, to the Trustee for and on behalf of the Syndicate.

In order to secure the payment of said loan, the Receiver sells and transfers to the Trustee for and on behalf of the Syndicate a schedule of stocks and bonds and securities, among which is the Fifteen Thousand shares of stock of the Western Railway of Alabama, which is subject, however, to a previous pledge made by the Central Railroad & Banking Company of Georgia to the Central Trust Company of New York, dated May 2nd, 1887, to secure Five Million Dollars of collateral trust bonds.

The securities pledged under this agreement shall be held by the Trustee first, for the $600,000.00 loan provided for by the agreement, and shall be held as further and additional security

for the following indebtedness and charges *pari passu*, to-wit, the loan of October 7th, 1892, for the sum of $3,889,206.84, of which loan the said H. B. Hollins & Company are agents and managers, and which is commonly known as the Speyer Loan; a loan made to the Mercantile Trust Company of New York on December 19, 1892, in the sum of $705,063.00, but the securities pledged under the agreement shall not be held as further security for the said two last mentioned loans, except on the following terms.

137 Any creditor representing any portion of said Speyer loan or the said Mercantile Trust Company loan by a deposit of the securities under the terms of this agreement with the Trustee under this agreement, shall become an assenting creditor, and entitled to the benefits of the pledge of the property. If the said three mentioned loans, or any part of them, shall not be paid on the first day of July, 1903, or of the collaterals pledged hereunder shall be sold together and the proceeds applied first, to the repayment of this loan and next to the extinguishment of the claims of assenting creditors. If the collateral securities pledged under the agreement shall be bought in by the Trustee under the agreement for the account of the lenders of the said $600,000.00 or of any assenting creditors, the said securities shall be held by the Trustee for the period of a year, subject to redemption by the repayment of said several loans by a committee engaged in the reorganization of the property of the Central Railway & Banking Company of Georgia, and of its allied properties. In the event that the reorganization plan should fall through, then such right of redemption might be exercised by Receiver. Subject to the lien of the loans hereinbefore described, said collateral securities shall be chargeable with a lien for all expenses and charges incurred by the reorganization committee, subject, however, to approval by the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. Members of the Syndicate

138 making the loan and assenting creditors shall receive trust certificates from the Trustee representing the amounts severally advanced by them.

Upon the payment in full of all the obligations secured by the agreement, the Trustee shall return to the Receiver all the collateral securities hereby conveyed. If for any reason any of the properties or assets of the Railroad Company should be sold before July 1st, 1893, under decree of Court, then and in that event, all the loans secured by this agreement shall at the option of the parties of the third part become due and payable at once. For the purpose of expediting and furthering the reorganization plan which was under contemplation the parties to the agreement agree that the Trustee whenever requested thereto by the Syndicate, with the consent and approval of the Receiver from time to time, may deposit the securities and their properties securing the said loans with the Mercantile Trust Company as Trustee, or with some depository agreed upon as the Trustee of the reorganization plan, and receive in lieu thereof negotiable certificates of the Trustee.

An order of the Fifth Circuit Court of the United States in the said consolidated causes in equity passed on the 19th, day of January

1903, ratifying and confirming the foregoing agreement was read in evidence.

(*b.*) The sworn petition of H. M. Comer and R. Somers Hayes as Receivers of the Central Railroad & Banking Company of
139 Georgia, to the said Fifth Circuit Court of the United States in the said consolidated causes, stating it was for the interest of all parties that the property be sold in bulk, and an order of the said Court thereon, instructing the Receivers to enter into the proposed stipulation with the Mercantile Trust Company and Thomas & Ryan which is next hereafter set forth.

Stipulation between the Receivers and the Mercantile Trust Company and Thomas & Ryan was substantially as follows: The stipulation first recited that all of the secured floating debt of the Central Railroad & Banking Company of Georgia together with the collateral security pledged for the payment thereof had been consolidated and assigned to and deposited with the Mercantile Trust Company among which was the fifteen thousand shares of stock of the Western Railway of Alabama subject to the previous pledge to the Central Trust Company of New York on May 2nd, 1887, to secure the issue of Five Million of Collateral Trust Bonds. The stipulation next recited that the payment of all this indebtedness had been in default since July 1st, 1903, and had been extended from time to time upon the understanding that if a plan for the reorganization of the Central Railroad & Banking Company should become inoperative before the indebtedness was finally paid, and if the Mercantile Trust Company as the assignee of the debts and collaterals
140 should sell the said collaterals and buy them in upon such sale, it would use the same for the purpose of said reorganization plan. The stipulation next recited that a plan of reorganization had been prepared, and embodied in an agreement dated May 25th, 1903, between the Mercantile Trust Company and Samuel Thomas and Thomas F. Ryan, which plan had become operative by reason of the deposit of securities thereunder. The stipulation next recited that the Mercantile Trust Company had served notice upon the Receivers, that it would sell all of the collaterals on the 18th, day of September 1895, to pay the consolidated indebtedness. In pursuance of the recitals of the stipulations, it was agreed, first, that the particulars and amount of the said indebtedness were as follows: (It is unnecessary to state the details of the indebtedness), second, that upon the sale of said collateral, it should be offered in bulk and as one parcel and that the Mercantile Trust Company should bid *bid* at such sale an amount necessary to purchase the same not to exceed the amount of the indebtedness secured by said collaterals, and that if the collateral should be purchased by the Mercantile Trust Company upon said sale, it would use the same for the purpose of the said plan of reorganization, and if the Mercantile Trust Company fails to produce said collaterals within the limit of price above specified, it will bid such further sums upon the sale, as may be paid to it by the said Thomas & Ryan, the said sum not to exceed however,
141 a sum which in the opinion of the said Trust Company equals the value of said collaterals to the proposed new Railroad

Company which was to be organized by Thomas & Ryan; thirdly, in order to procure the use of the securities constituting said collateral under said plan of re-organization of said Trust Company after it shall have obtained title thereto, and in consideration of the agreement of the Trust Company to make such use, Thomas & Ryan stipulated and agreed that they would prior to such sale pay to said Trust Company such a sum of money as might be necessary for the said Trust Company to bid in excess of the amount of indebtedness due as above specified; fourthly, that if the plan of reorganization should become inoperative that the Receivers shall immediately thereupon, whether before or after the sale of said collateral, be vested with the right to redeem and take over all said collaterals by paying to the Mercantile Trust Company the whole indebtedness, but this right of redemption shall be exercised only within thirty days, beyond which the plan shall become inoperative.

(*c.*) The plan of reorganization referred to in the above stated stipulation is as follows:

Upon foreclosure of the tripartite or consolidated mortgage or both and sale of securities pledged for the floating debt, the Purchasers of said railroad will organize a new corporation, to be called the Central of Georgia Railway Company, which will be
142 vested with the titles to the railroads and properties covered by such mortgage and pledge.

To acquire title thereto and to the other railroads, properties, leaseholds hereinafter mentioned, being all the interest and properties now owned by the Central Railroad & Banking Company of Georgia, such new corporation will issue to the purchasers the following securities:

A. $7,000,000 1st mortgage 50-year gold bonds, bearing 5 per cent. interest, secured by trust deed or mortgage which shall be a first lien on the main line of railroad from Atlanta to Savannah, including the Milledgeville branch, all equipments and appurtenances and the equity in the steamship properties.

B. $16,500,000 consolidated 50-year gold bonds, bearing 5 per cent. interest, secured by a trust deed or mortgage which will be a second lien on the main line, its equipments and appurtenances and a lien upon all leaseholds, securities and properties acquired by the new Company, which are now owned by the Central Railroad & Banking Company of Georgia, subject to all existing contracts and liens, so far as accepted by the new Company, and a first lien upon the Montgomery & Eufaula Railroad and the Savannah & Western Railroad, (except the Chattanooga, Rome & Columbus Railroad) and the Columbus & Rome Railroad, and a second lien upon the Mobile & Girard Railroad and the Macon & Northern Railway and
143 their equipment, property and appurtenances, if and when title thereto are acquired by such new Company. This issue of consolidated bonds may be increased $2,000,000, at the rate of not more than $500,000 in any one year, the proceeds of such increase to be used by the new Company strictly for the purpose of betterments and purchase of equipment for the railroads covered by this mortgage.

C. $4,000,000 first preference income bonds, secured by a trust deed or mortgage which shall be a lien on the Savannah & Western, Columbus & Rome, and Savannah & Atlantic Railroads and the Macon & Northern Railway, and their equipments, property and appurtenances of such said railroads as the new company may acquire title to. This income mortgage shall also be a third lien on the main line and a second lien of all leaseholds, securities and equities of properties acquired by the new company, subject to all underlying liens and contracts.

Such income bonds shall mature in fifty years, be non-cumulative, and bear interest not exceeding 5 per cent. in any one fiscal year, but payable only out of net earnings as declared and secured by the deed of trust.

D. $7,000,000 second preference income bonds in all respects similar to the first preference income bonds, except that they are to be secured by a trust deed on the same properties junior to the one securing the first preference income bonds and no interest shall be paid on such second preference incomes in any fiscal year until full
5 per cent. has been paid out of such year's income on the
144 first preference incomes.

E. $4,000,000 third preference income bonds in all respects similar to the second preference income bonds, except that they are to be secured by a trust deed on the same properties junior to the ones securing the second preference income bonds, and no interest shall be paid on such third preference incomes in any fiscal year until full five per cent. has been first paid out of such year's income on the first and second preference incomes.

The following bonds now outstanding are to remain undisturbed:

F. $5,000,000 full paid common stock.

Ocean Steamship Company 1st Mortgage.....	$1,000,000
Collateral Trust Mortgage.....	4,889,000

The Mobile & Girard first mortgage is to be foreclosed and when title is acquired by the new Company a new mortgage for one million dollars to secure a 50-year gold bond at five per cent. to be made, new bonds to be exchanged dollar for dollar for the present bonds. Accrued interest on the present bonds shall be paid at the rate of the coupons, with six per cent. interest on the coupons; the difference in value between the four per cent. and the six per cent. Mobile & Girard bonds until their maturity to be adjusted.

The Macon & Northern Railway is to be purchased, and
145 when title is acquired by the new Company, a new divisional first mortgage for $840,000 to secure a 50-year gold bond at five per cent. bearing interest from November 1st, 1895, is to be made; such bonds to be used in part payment of purchase.

It is intended that the new Company will acquire title, free of all lien, except as hereinafter stated, to the railroads, equipment and property covered by the following mortgages: The first mortgages upon the Savannah & Western, the Montgomery & Eufaula, Columbus & Rome, Savannah & Atlantic, Mobile & Girard Railroad and

Macon & Northern Railway respectively, and will also acquire title to all assets of said corporations except as herein otherwise provided.

The new Company will obtain new leases of the Southwestern and Augusta and Savannah Railroads at a rental of *5% per cent.* upon their respective capital stocks. Any arrears of rentals due to these railroad companies respectively, shall be adjusted on this basis.

In the event that any of the railroads contemplated by this plan to be purchased or leased shall not be purchased or leased by the new company, then the securities herein provided to be issued in exchange of the present securities hereafter specified or in payment of the railroads not purchased or leased or to pay off existing bonds and other charges thereon as herein provided shall not be issued, and if any of these securities herein contemplated to be deposited or
146 exchanged shall not be deposited or exchanged, or their proportionate interest in the respective railroads otherwise acquired, the amounts of the new securities to be issued as herein provided shall be reduced by the proportions that the securities not deposited or exchanged or acquired bear to the issues respectively of which they may be portions, and any of said railroads, not so purchased or leased shall be excluded from this plan, which shall remain effectual as to the issue of all securities for the remaining railroads purchased or leased.

Distribution of New Securities.

First. All bond issues "A" and "B" being $23,500,000 5 per cent. first consolidated mortgage bonds, the $7,000,000 second preference income bonds, the $4,000,000 third preference income bonds and $5,000,000 full paid capital stock, are to be issued and delivered over by the new Company to the purchasers as part payment for the title to the main line and other railroads, leaseholds, securities and equities in steamship and other properties. The Montgomery & Eufaula first mortgage bondholders are to be offered by the purchasers an opportunity to exchange their bonds at par for consolidated bonds of the new company, and the past due interest thereon is to be paid in cash.

147 Second. All the $4,000,000 first preference income bonds shall be issued and delivered over by the new company to the purchasers as part payment for the title to properties to be covered by the first, consolidated, general and income mortgages, and also to realize the necessary funds to exchange and so far as necessary, for partial payment of or in direct exchange for the present mortgage bonds held by the public resting upon the Savannah & Western, Savannah & Atlantic, Columbus & Rome Railroads and Macon & Northern Railway, as and when the title under foreclosure to such respective railroads free of all liens is acquired by the new Central of Georgia Railway Company.

Third. The new securities are to be distributed to depositors under or assentors to this plan upon the following basis:

In exchange and satisfaction and upon delivery of each Savannah & Western first mortgage bond held by the public and all unpaid

coupons thereto belonging, assenting to or deposited under this plan, there shall be delivered to the depositor or order $550 in new consolidated mortgage bonds, $350 in such new preference income bonds and $250 in second preference income bonds. All consolidated bonds thus allotted will be sold for account of the owners by the syndicate marketing the *the* main issue of such securities, provided
that any Savannah & Western bondholder shall have the
148 right upon written option filed with his protective committee
within 15 days after the bondholders' meeting to require the purchasers to buy his share of such consolidated bonds at 85% *per cent.* of their par and interest accrued after September 1, 1895.

The assenting or depositing owner of each similarly deposited Columbus & Rome Railroad $1,000 first mortgage bond and unpaid coupons, shall receive on delivery, in exchange therefore $500 in first preference and $500 in second preference income bonds.

The assenting or depositing owner of each similarly deposited Savannah & Atlantic Railroad $1,000 first mortgage bond and unpaid coupons, shall receive on delivery, in exchange therefor, $600 in first preference income bonds and $500 in second preference income bonds.

Fractional parts of $1,000 bonds will *re* represented by scrip exchangeable in amounts of $1,000 into bonds.

For each similarly deposited certificate of indebtedness of the Central Railroad & Banking Company of Georgia, there shall be issued on delivery in exchange and satisfaction a second preference income bond of the new Company at par of said certificate, exclusive of interest.

Fourth. The purchasers agree to take up and exchange so much of the 32,800 shares of the present stock of the Central Railroad & Banking Company of Georgia owned by the public, when and as such stock is deposited with the Mercantile Trust Company of New York for such purpose, at the rate of par in the third preference income bonds of the new Company.

Fifth. The purchasers agree, on the conditions of acquiring title thereto, to free the property of the Savannah & Western Company
from any claim of indebtedness to the Central Railroad &
149 Banking Company of Georgia, and also to pay the underlying
bonds issued by the Columbus & Western Railroad Company of $800,000. The purchasers shall not be obliged to pay off the bonds of the Columbus & Rome Railroad of $200,000, or the $250,000 bonds of the Savannah & Atlantic Railroad, otherwise, than by exchanging and delivering therefor first and second preference income bonds as hereinbefore stated.

The purchasers further agree, on the conditions aforesaid, to pay or cause to be paid reasonable compensation for underwriting and to committees and depositories; all the secured floating debt of the Central Railroad & Banking Company of Georgia; the tripartite bonds with interest; all the expenses of the main line receivership and foreclosure and allowed preferential claims after application of all funds in the hands of receivers available therefor, and in like manner the debts and preferential claims of the receiverships of any

other lines embraced in this plan, title to which is acquired by the new Company; all expenses of the organization of the new company and issue of new securities and charges incurred in effecting the exchange of Montgomery & Eufaula Railroad first mortgage bonds, and generally all the expenses of carrying out this plan, including reasonable compensation for themselves. All securities not used for the purposes herein provided shall be turned into the treasury of the new company.

150 Sixth. The Mercantile Trust Company shall be the common agent of the creditors, stockholders, purchasers and new company for the deposit and exchange of securities as herein provided under appropriate agreements. The purchasers reserve the right to alter or amend this plan with the consent of the Mercantile Trust Company in case the security holders on any railroad fails to accept the same to a sufficient amount to render this plan operative as to such road, provided that the amount or classes of securities and reservations of bonds for betterments and equipments and amount of fixed charges shall not be increased, and also to fix conditions and time limits for the deposit of securities hereunder.

(*d.*) A report of H. M. Comer and R. Somers Hayes, as receivers of the Central Railroad & Banking Company of Georgia, to the said Fifth Circuit Court of the United States in the said consolidated causes with reference to the sale of the collateral pledged for the floating debt of the Central Railroad and the Receivers, which shows that in pursuance of the stipulation hereinbefore recited, that the said Mercantile Trust Company after due advertisement, offered all of the collateral pledged to secure said floating debt in bulk (among which was the said 15,000 shares of the Western Railway of Alabama stock subject to the previous pledge to the Central Trust Company of New York securing an issue of five million dollars of collateral

151 trust bonds dated May 2, 1887) and sold the same on the 18th, day of September, 1895, the said Mercantile Trust Company being the purchaser thereof, at and for the sum of One Million Dollars which amount has been credited upon the debt for which said collateral was pledged. An order dated the 17th, day of October, 1895, of the said Fifth Circuit Court of the United States in the said consolidated causes passed upon the report of the Receivers above referred to approving the sale of the said collateral to the Mercantile Trust Company, and authorizing and instructing the receivers of the Central Railroad & Banking Company of Georgia to execute all assignments, transfers and deed necessary to effect the delivery of possession and passing of title to said purchasers of the said collateral.

(*e.*) An assignment dated June 9, 1893, by Samuel Thomas and Thomas F. Ryan, to the Central of Georgia Railway Company, of all the right, title and interest to the following described bonds, stocks and securities, that is to say all stocks, bonds and securities formerly the property of the Central Railroad & Banking Company of Georgia held by the Central Trust Company of New York as trustee under the collateral trust mortgage of said Central Railroad & Banking Company of Georgia, dated May 2, 1887, and all bonds, stocks, and securities formerly the property of the Central Railroad & Banking

Company of Georgia, and held by the Mercantile Trust Company of New York, having been acquired by said Company upon the sale of the collateral for the floating debts of said Central Railroad
152 & Banking Company of Georgia, and all the bonds, stocks and securities formerly the property of the said Central Railroad & Banking Company of Georgia, and deposited with the Georgia Railroad & Banking Company, as security upon the lease of the railroad of said company executed by said company to William M. Wadley on or about the 7th, day of May, 1881.

Responding to defendant's notice to produce papers counsel for Plaintiff stated that he had seen an assignment of the title and interest of said Mercantile Trust Company to Thomas & Ryan, but same was not in petitioner's power, custody or control.

The affidavits of the following Tax-Receivers for the Counties and for the years set opposite their respective names, the affidavits of said Tax-Receivers being identical:

(Note by the Judge: The affidavits of the Tax Receivers and Collectors were admitted to show what had been done, but not to show the policy of the State." J. T. Pendleton, Judge S. C. A. C.)

153 Name.	County.	Year Inclusive.
John R. Dillon	Chatham	1885-1900
J. B. Butler	Wilkinson	1899-1905
Graham Thompson	Houston	1902-1905
M. D. Oliff	Bulloch	1902-1905
B. C. Reynolds	Haralson	1903-1905
R. E. Richardson	Harris	1902-1905
M. C. Griffith	Oconee	1888-1905
D. T. Soggins	Walker	1901-1904
J. S. Roberts	Early	1898-1904
W. S. Foster	Clayton	1903-1904
R. E. Dorsett	Chattooga	1905
R. H. Ware	Coweta	1903-1904
C. L. Moran	Baldwin	1902-1905
Wm. Mauny	Calhoun	1903-1905
John M. Weeks	Johnson	1903-1904
T. G. B. Law	Laurens	1903-1904
B. F. Bagley	Chattahoochie	1889-1905
H. T. Hodge	Washington	1897-1904
J. T. Vaughn	Pike	1903-1905
J. A. F. Brown	Carroll	1901-1904
154 J. F. Lumford	Newton	1901-1905
W. E. McCormick	Polk	1897-1905
R. W. Blanton	Talbot	1901-1904
J. H. Henderson	Muscogee	1905
W. J. Moore	Upson	(1898-1905 except 1902)
J. T. Tondee	Schley	1901-1905
G. T. Souther	Jones	1903-1904
J. J. Henderson	Jones	1901-1902-1905
R. A. Templeton	Burke	1900-1905
S. W. Gunnison	Dougherty	1897-1905

W. H. Keller	Meriwether	1903-1905
R. H. Banks	Monroe	1905
J. S. Jinks	Taylor	1895-1905
H. T. Johnson	Spalding	1899-1905
L. C. Spence	Early	1905
J. P. Raiford	Sumter	1897-1905
W. H. Clopton	Newton	1870-1905
T. T. Waller	Terrell	1899-1904

All of the affidavits of the above named Tax Receivers were as follows:

155 "Before me personally appeared —— —— who on being duly sworn deposes and says:

He is Receiver of tax returns for the County of —— and has been such since the year —.

Since deponent has been receiver of tax returns for said County the shares of holders of stock in railroads chartered by the State of Georgia have not been returned by said shareholders for taxation, nor has deponent required returns from such shareholders, and this has been the uniform practice ever since deponent has been Tax Receiver as aforesaid.

The holders of shares of stock of manufacturing corporations chartered by the State of Georgia have not returned their stock for taxation during deponent's term of office, nor has deponent required any returns from the holders of such stock. This has been the uniform practice since deponent has held said office.

The owners of shares of stock of foreign corporations who reside in the State of Georgia have not returned said Stock for taxation since deponent has been in office, nor has deponent required any returns from such holders of such stock, and this has been the uniform practice of deponent since he has been in said office.

156 It has been deponent's uniform practice to require returns of property from all domestic corporations which are subject to be taxed in said County, except such as under the law make their returns to the Comptroller-General of the State of Georgia, and that the shareholders in all of said corporations which do make their returns to deponent have not made any returns to deponent for their stock for taxation, nor have any other stockholders of any kind or character made any returns to this deponent for taxation, nor does deponent require returns therefor.

The affidavit of J. M. Crozier, Tax Receiver of Floyd County, for the years 1898-1904 both inclusive was read in evidence and was identical with the above with the exception that at the end of the fifth paragraph these words were added "Except that Doctor James Ivey returned $2,000.00 of stock in the Anchor Duck Mills by mistake and the County Board of Commissioners of Floyd County, Ga., relieved him of that return."

The affidavit of E. Gary Summers, Tax Receiver of Coweta County, since January 1st, 1905, was read in evidence and was

identical with the above form of affidavit with the exception that the fourth paragraph thereof was omitted from his affidavit.

157 The affidavit of John H. Duggar, Tax Receiver for Washington County, since January 1st, 1905, was read in evidence and was identical with the above form of affidavit with the exception that affiant stated that his books had not yet closed and that no one had "as yet" returned either foreign or domestic stock and "as yet" he had not required any returns from either the holders of foreign or domestic stocks.

The affidavit of W. E. Clark, Tax Receiver of Jefferson County, for the years 1890 to 1900 and 1902-1904 was read in evidence and was identical with the above form of affidavit with the exception that the following words in the fourth paragraph are stricken from this affidavit, towit: "Nor has deponent required any returns from such holders of such stock.

The affidavit of W. R. Pope, Tax Receiver for Jasper County, for the years 1900-1904 was read in evidence and was identical with the above form of affidavit with the exception that the following sentence is added after the fifth paragraph, to-wit: "But while deponent was such receiver two persons did return debentures for taxation."

The affidavit of S. H. Shelley, Tax Receiver of Randolph County for the years 1890-1895 was read in evidence and is identical with the above form of affidavit with the exceptions that deponent

158 stated that he had been Tax collector of said County since 1898 and that while he had been tax collector no one had paid to him taxes on either foreign or domestic shares of stock and that while he was tax collector he was familiar with the digest of tax returns, and that no one had during the years he was tax collector made any returns of either domestic or foreign stocks, and that the practice of the tax receiver was not to require returns of either foreign or domestic stock.

The execution issued by the Comptroller-General dated October 27th, 1902, for the State tax for the year 1900 for $8,160.00, together with interest. "Said amount being the State tax due by the said Central of Georgia Railway Company upon the fair market value of 15,000 shares of stock in the Western Railway of Alabama of the aggregate par value of $1,500,000 owned and possessed by the said Railway Company on the day fixed for the valuation of property in the State of Georgia, for taxation for the year 1900, which property was not returned for taxation for said year as required by law, and the same has been assessed by me as Comptroller-General under the law for the best information he can procure."

Executions for the years 1897 to 1901, inclusive, and the years 1903, 1904 and 1905 were in the same form except for the change of dates and figures. They were issued January 23rd, 1906,

159 and were for the following amounts; the assessment of 1900 being again inserted for convenience of reference:

Year.	Value.	Tax Rate.	Tax.
1897	$1,400,000	5.21 Mills	$7,294
1898	1,100,000	6.21 "	6,831
1899	1,450,000	5.36 "	7,772
1900	1,450,000	5.20 "	7,540
1901	1,600,000	5.44 "	8,704
1902	1,950,000	5.30 "	10,335
1903	2,200,000	5. "	11,000
1904	2,200,000	4.80 "	10,560
1905	2,210,000	4.90 "	10,829

Each of these executions called for interest to be collected from December 20th, of the year for which the tax was claimed at the rate of seven per cent. per annum.

Assessments on the Western Railroad of Alabama on 15,000 shares of Alabama stock for 1896 as follows: "Whereas the Central of Georgia Railway Company, a corporation chartered under the laws of Georgia and doing business in this State, having failed and refused to return for taxation for the year 1896 15,000 shares of stock of the Western Railway of Alabama, an Alabama
160 corporation, said stock being them held and owned by said Central of Georgia Railway Company in this State: and having failed and refused to pay the taxes due the State thereon for the year 1896 as required by law, I hereby assess the said 15,000 shares of stock of the Western Railway of Alabama for said year as being then of the value of $1,500,000. Said assessment being made by virtue of authority vested in me by law as Comptroller-General "from the best information I can procure."

Given under my hand and seal of office, this January 23rd, 1906.

WILLIAM A. WRIGHT,
Comptroller-General of Georgia."

Similar assessments for the years 1897 to 1905 inclusive were introduced—They differed only as to the statement of the years and the amount—said years and amounts are respectively as follows:—

Years.	Amount.
1897	$1,400,000.00
1898	1,100,000.00
1899	1,450,000.00
1900	1,450,000.00
1901	1,600,000.00
1902	1,950,000.00
1903	2,200,000.00
1904	2,200,000.00
1905	2,210,000.00

161 The plaintiff read in evidence the following extract from the official report of Comptroller-General Wright for the year 1903:

"The Constitution of 1877 requires all property real and personal in this state to be taxed ad valorem, except such property as is specifically exempt, and I have embraced a question in the tax list required by law to be submitted to all tax payers, call for returns of *all* stocks and bonds, in which is included stock held by citizens of this State in non-resident corporations. Notwithstanding this, I believe I am correct in saying that little if any of such stock in this state are returned for taxation, the owners claiming that there is no statute providing specifically for their taxation and refusing to return them. I have a case now pending in the Courts involving this question, in which I am claiming back taxes upon property of this kind, amounting to about $200,000. I refer to the suit of the Comptroller-General *vs.* the Georgia Railroad & Banking Company to recover back taxes on 15,000 stock of the Western R. R. of Alabama held by the Georgia Railroad since 1881. The Central of Georgia Railway also is an owner of an equal amount of said stock, which we hope to subject to taxes for the same time."

Plaintiff also read in evidence extract from the official report of said Comptroller-General for the year 1903 as follows:

"Stocks in foreign corporations of this State should be required to be returned for taxation in this State, it being claimed by
162 the owners of such that there is no statute of Georgia which specifically requires their return for taxation. This item of property if taxed would add several millions of dollars to the taxable property of the State." It was admitted that the Georgia Railroad & Banking Company and the Central of Georgia Ry. Co., were the only persons owning foreign railroad stock proceeded against for taxes on these kinds of shares. The Comptroller-General's statement that he knew of no other delinquent was also admitted.

Affidavit of F. A. Healy.

"That he is Auditor of the Atlanta & West Point Railroad Company and the Western Railway of Alabama; that he is familiar with each Company and with the railroads, their earnings and their values; that the same are operated together; that the Western Railway of Alabama from West Point, Georgia, to Montgomery, Alabama, is eighty seven and one half miles long, and is of equal length with the Atlanta & West Point Railroad, and is operated on a part of the line between New York and New Orleans; that the balance of the Western Railway of Alabama, West of Montgomery, Alabama, to Selma, Alabama, is fifty miles long, and is not a through line, nor is its value or earning capacity more than one half of the remaining eighty-seven and one-half miles.

163 The bonded debt of the Western Railway of Alabama now outstanding is one million, five hundred and forty three thousand ($1,543,000.00) Dollars.

The Western Railway of Alabama, as above stated, between West Point, Georgia, and Montgomery, Alabama, is of equal length with the Atlanta and West Point Railroad.

Deponent further avers that said Atlanta & West — Railroad Company is assessed by the State of Georgia at one million eight hundred and ninety-eight thousand three hundred and forty-six ($1,898,346.00) Dollars, which is twenty two thousand one hundred and eighty two ($22,182.00) Dollars per mile."

The tax returns made by the Atlanta & West Point Railroad Company to the Comptroller-General as shown by his reports are as follows:

1897	$1,659,850
1898	1,602,027
1899	1,636,732
1900	1,585,953
1902	1,715,802
1903	1,904,970
1904	1,898,346

Summary of tax assessments of corporations for the years 1902 and 1903, Table 19 of Comptroller-General's reports for those years:

164 *General Returns.*

1902.

Southern System, average per mile	$10,816
Central of Georgia, average per mile	10,248
S. F. & W. Ry., average per mile	11,947
S. A. L. Ry., average per mile	11,870
Miscellaneous, average per mile	7,633
Average	$10,154

1903.

Atlantic Coast Line, average per mile	$15,925
Central of Georgia, average per mile	14,720
Seaboard Air Line, average per mile	12,326
Southern Railway, average per mile	12,983
Miscellaneous, average per mile	7,662
Average	$12,923⅓

It was admitted by defendant's Counsel that the State of Georgia was the owner of one hundred and eighty-six shares of stock in the Georgia Railroad & Banking Company, which fact appears in the Comptroller-General's reports.

A letter was read in evidence from C. G. Goodrich to W. A. Wright, Comptroller-General, dated May 4th, 1889, concerning tax matters and referring him to page 4 of the annual report of the

Georgia Railroad & Banking Company for the year 1889. In
165 said annual report on page 4, under the head of "Resources" appears the following: "15,000 shares Western Railway of Alabama stock at $60, $900,000."

The above evidence being introduced for the purpose of showing that the Comptroller-General knew the fact that the Central of Georgia Railway Company was owner of the other half of the stock of the Western Railway of Alabama, and also to show that the Western Railroad ownership had been converted into a stock ownership, and also to show that the State had acquiesced in the non-taxability of such stock.

The annual tax returns of the Georgia Railroad & Banking Company for the year 1878 and 1879 were produced by the Comptroller-General, the return for the year 1878 showing under the head of "Stock or shares owned by" the following:

4000 A. & W. Pt.	$400,000
1489⅜ Rome R. R.	100,000
18,000 N. C. & St. L.	65,000

"Not liable for tax the first two companies being railroad companies of this State and paying taxes for stockholders, the last being a foreign corporation."

The return for the year 1879 shows under the head of "Stocks or Shares owned by" the following:

166 4000 Shares Atlantic & W. Pt. R. R. Co.	$400,000
1489⅜ Rome R. R. Co.	100,000
Interest in Port Royal R. R. Co.	75,000
Interest in Western R. R. of Ala.	100,000

These stocks and interests in railroads are here set out that the Comptroller-General's office may have a complete property return. They are not returned for taxation, because they are not under the laws of Georgia, taxable in the hands of owners *of the owners* or shareholders."

The following extract from the answer of William A. Wright, Comptroller-General and *H*ohn W. Nelms, Sheriff, to the petition of the Georgia Railroad & Banking Company, said petition being brought to restrain the said defendants from levying tax executions against the *defendant* for taxes on 15,000 shares of Western Railway of Alabama stock, the said stock standing on the books of the Western Railway of Alabama in the name of the Georgia Railroad & Banking Company, to-wit: "When shares of stock subject to be taxed by the Constitution and laws of Georgia are found issued in the name of, or in the possession of *of* a resident holder and owner thereof, it is no concern of the taxing officer to inquire who may, under some private contract, be entitled to the dividends which the holder
167 and owner receives. These private equities between parties are no concern of the State or its taxing officers. The entire value of the share or shares is taxable as a single entity at the

domicile of the legal owner in whose name and possession said shares are found and is not taxable in parts to the various persons who may be entitled to receive or share in the dividends arising therefrom."

Tax rate for Chatham County and City of Savannah for the following years:

Chatham county.		City of Savannah.	
Year.	Rate.	Year.	Rate.
1890	6.54 mills.	1892 to 1896 inc	1.50c.
1891	6.50 "	1897 to 1904 inc	1.45c.
1892	6.25 "		
1893	6.29 "		
1894	6.23 "		
1895	6.59 "		
1896	6.50 "		
1897	6.99 "		
1898	6.49 "		
1899	6.29 "		
1900	6.25 "		
1901	7.56 "		
1902	7.50 "		
1903	7.20 "		
1904	7.70 "		

168 GEO. H. RICHTER for Plaintiff Testified:

I am assistant Secretary of Central of Georgia Railway Co., and have been in this capacity and in others continuously engaged in railroad work since 1891. During this time I have had considerable experience in the compilation of figures in railroad matters, and in the examination of reports of railroad commissions, of railway companies, and similar reports.

I have personally compiled the ten tables for the years 1895 to 1904, inclusive, marked Exhibit A, which are attached hereto, and said tables with the memoranda preceding the same, are correct. The figures used therein are taken as therein indicated, from the official annual reports of the Comptroller-General of the State of Georgia, the official annual reports of the Railroad Commission of Georgia, and the official annual reports of the Western Railway Company of Alabama. In additions to the explanations attached to the said tables, the following explanations are given.

The Atlanta & West Point Railroad Company, Central of Georgia Railway Company, Georgia Southern & Florida Railway Company, Southern Railway Company, and Wrightsville and Tennille Railroad Company have been used for each of the years, although the mileage of some of these roads have changed from time to
169 time. The Plant System is used for the years 1895 to 1902, inclusive. Thereafter, the Atlantic Coast Line, into which the Plant System was consolidated, is used in its place. The Seaboard Air Line, designated as S. A. L., appears for the first time in 1901 as a combination of the Florida, Central and Peninsular,

Georgia & Alabama, and Georgia Carolina and Northern, which form constituent parts of the Seaboard Air Line Railway. The Georgia, Florida & Alabama, referred to as G. F. & A., appears for the first time in 1902, prior to which time it either did not exist, or was too small to be of consequence. The Atlantic & Birmingham, referred to as A. & B., for the same reason appears for the first time in 1903.

These railroads have been selected because they were either the largest railroads in the State, having the largest earnings, or was representative railroads. The last figure in the table is not the sum of the figures used for these selected railroads, but is the total for all railroads in the State, as well those appearing in the table, as those not so appearing.

Footnotes to the tables show certain deductions which have been made. These are of two characters only. The first class of deductions is for property covered in the returns of Central of Georgia Railway Company which was not part of the taxable property
170 of that Company, but consisted largely of rolling stock and other property appurtenant to its 261.77 miles of non-taxable mileage; such rolling stock and other property, however, being nevertheless taxable. The second class of deductions has been on account of the earnings of properties included in reports of earnings, but not included in assessments for taxation on account of charter exemptions, or (in the case of the Western & Atlantic Railroad) ownership by the State. The actual reported net earnings of the Western & Atlantic Railroad were deducted. In the case of exempt lines of Central of Georgia Railway Company and Georgia Railroad and Banking Company, that proportion of total net earnings which their exempt lines bore to the total lines was deducted. No correct comparisons could possibly be made without making these deductions.

In each table the Western of Alabama Railway has been treated exactly the same as the Georgia Railroads.

The tables are based on the extract from the affidavit of Wm. A. Wright, Comptroller-General, made in this case, and appearing in the bill of exceptions signed in his case July 4, 1905, on page- 147-8 of the printed copy thereof, wherein he states "I ascertained the amount of gross earnings of the Western Railway of Alabama for each year in which the said shares of stock of the Western Railway were in default for taxes. I also ascertained the operating
171 expenses of the said road for the same period and deducted the operating expenses from the gross income, except when the operating expenses appeared to include betterments; I then deducted 66⅔ per cent. of the income as operating expenses; and from that sum deducted the annual interest, charged on the said Western Railway of Alabama, and capitalized the balance at six per cent., thus reaching what I deemed the market value of the shares of stock of the said Western Railway of Alabama, and made my assessment for each year upon this basis of value thus arrived at."

In making comparisons, there being no assessments upon the stock of railroads in Georgia, but upon their properties, it was neces-

sary to change his method only by eliminating his deduction of the indebtedness of the Western of Alabama. In stating his assessment of the Western of Alabama stock *stock* in column five of the tables, his assessment of the one-half thereof belonging to each railroad has been doubled, and to it has been added $1,543,000. which is the amount of the indebtedness of this railroad. In other words, column five, assuming the bonds to be worth par, shows the total assessment of the capitalization, and therefore of the property, of the Western Railway; for example, in 1895, he assessed:

To Georgia Railroad, 15,000 shares.....	$900 000 00
To Central of Georgia Ry., 15,000 shares.....	900 000 00
Add indebtedness	1 543 000 00
Total in column 5.....	$3 343 000 00

172 It will be observed that notwithstanding his statement as to method, his actual assessment in every year except the year 1898 has been greater than the result arrived at by using his method. In 1899 it was 24.31 per cent. more. For the ten years, the average percentage which his actual assessments bear to his theoretical valuation is 109.98, which means that he has added nearly ten per cent. to the gross over valuation which resulted from his alleged method.

Taking the figures for all the railroad mileage in the State, it will be observed that the maximum percentage of actual assessment to theoretical valuation was in 1903, when it was only 54.79, less than one half of the maximum in the Western of Alabama case, 124.31 in 1899. The average percentage of actual assessment to theoretical valuation for all these railways for the ten years is 49.63. In other words, applying his method of assessment, he has assessed the Western Railway of Alabama at ten per cent. in excess of the results ascertained, and has assessed all the railroads in Georgia at less than one-half of the results ascertained.

Comparing the Western of Alabama Railway with Atlanta & West Point Railroad, which is assessed by the Comptroller-General at a greater value per mile than any other railroad in the State of Georgia, and which has a greater value per mile tha/
173 Western Railway of Alabama, while the average assessment on the theoretical basis used by the Comptroller-General on Western Railway of Alabama is 109.98 per cent. of the ascertained results, the average of the Atlanta & West Point is only 43.39; in other words; the Western of Alabama, although of less value, is assessed at more than two and one-half times as much as the Atlanta & West Point.

Deponent attaches hereto as Exhibit B, a statement of the "Operating Ratio of the four subdivisions of Expenses" of all Railroads in United States reporting to Interstate Commerce Commission, of Group V. of said railroads, and of the Central of Georgia Railway Company, for the years 1897 to 1904, both inclusive. Said state-

ment has been compiled by him, so far as it concerns the railroads in the United States and in Group V, from the official annual reports of the Interstate Commerce Commission, and so far as it concerns the Central of Ga., Ry. Co., from the official annual reports of that Company. Said compilation is correct.

Sworn to and subscribed before me, this Jan. 27th, 1906.

(EXHIBIT "A.")

To Testimony of Geo. H. Richter.

Tables showing actual assessment of Railroad properties in Georgia for taxation 1895 to 1904, inclusive, as compared with capitalization of Net earnings on basis used by Comptroller-General
174 in assessment of Western Railway of Alabama, stock.

Assessments are taken from official annual reports of the Comptroller-General, and earnings of railways in Georgia from official annual reports of the Railroad Commission of Georgia: earnings of Western of Alabama Railway from its annual reports.

Column 1 shows *actual percentage of operating expenses* to earnings as per reports.

Column 2 shows the *percentage used* in the tables in ascertaining net earnings, being as per Comptroller-General's method a maximum of 66,66%; much less than the actual percentage.

Column 3 shows the *net earnings* of each railroad on the basis of the operating ratio of column 2: much greater than the actual net earnings.

Column 4 shows the *theoretical value* of the railroad properties ascertained by capitalizing the net earnings in column 3 on a 6% basis, much more than actual value.

Column 5 shows the *actual assessment* for taxation by the State of Georgia.

175 Column 6 shows the percentage which the actual assessment (column 5) bears to the theoretical valuation (column 4) used on Western Railway stock.

In each table a few of the prominent railroads in Georgia have been selected and treated in detail. The same roads are used in each table, except where changes or omissions were necessary on account of new railroads, and changes in systems.

The last line in each column covers the entire railroad mileage of the State.

In the case of Central of Georgia Railway assessments do not cover 261.77 miles (469.77 miles in 1895) operated by it, which are exempt for taxation. Proportionate earnings of this exempt mileage have been deducted from earnings as shown in Railroad Commission reports for the entire system. Likewise in the totals for all railroads in the State, the assessments do not cover these exempt miles of

Central Railway	261.77
Exempt miles of Georgia Railroad	229.
Exempt lines of Western & Atlantic	138.
Total exempt mileage	628.77

In column 3 the earnings of these exempt properties have been eliminated from the total as shown in Railroad Commission's reports.

176 1895.

1. Railroad.	2. Operating.		3. Net earnings.	4. Net earnings capitalized at 6 %.	5. State assessment.	6. % of assessment to capitalized value.
W of A	65.4	65.4	$177 198	$2 953 223	$3 343 000	113.11
A & W P.	64.2	64.2	160 496	2 676 943	1 597 814	59.69
C of Ga	66.4	66.4	718 954	11 982 833	4 199 426*	35.47
G S & F	78.6	66.66	297 405	4 956 766	1 497 315	30.37
Plant Sy.	68.65	66.66	1 127 456	18 790 947	7 531 806	40.
So.	70.68	66.66	1 049 011	17 483 516	9 043 183	51.72
W & T	70.52	66.66	25 420	423 677	184 472	43.5
All railroads in State	72.12	66.66	4 251 895†	70 914 929	37 134 622*	52.36

*There has been deducted $1,174,875. on account of property on non-taxable lines.

†There have been deducted from net earnings of all railroads in State, viz. $5 736 274 92

the following net earnings of non-taxable lines:

Central of Georgia	$647 200 93	
Georgia	377 377 76	
Western & Atlantic	456 800 44	
		1 481 379 13
leaving net earnings, as stated		$4 254 895 79

177 1896.

1. Railroad.	2. Operating ratios. Act.	Est.	3. Net earnings.	4. Net ea'ngs capitalized at 6 %.	5. State assessment.	6. % of ass't to capitalized value.
W & A	66.1	66.1	$177 224	$2 953 734	$3 643 000	123.33
A & W P.	58.41	58.41	197 006	3 283 442	1 629 682	49.63
C of Ga	69.25	66.66	975 127	16 252 126	8 303 326*	51.08
G S & F	72.90	66.66	281 185	4 686 433	1 574 812	33.6
Plant Sys.	69.48	66.66	1 034 497	17 241 632	7 428 345	43.08
So.	72.5	66.66	987 765	16 462 762	9 417 307	57.20
W. & T.	71.66	66.66	28 882	448 037	194 034	43.50
All Railroads in State	73 22	66.66	4 572 147†	76 202 463	40 509 853*	53.16

*There has been deducted $626,710. on account of rolling stock on non-taxable lines and property not used for railroad purposes.

†There have been deducted from net earnings of all railroads in State, viz. $5 643 382 32

the following net earnings of non-taxable lines:

Central of Georgia	$331 154 06	
Georgia	243 087 67	
Western & Atlantic	496 992 80	
		1 071 234 53
leaving net earnings, as stated		$4 572 147 79

178 1897.

1. Railroad.	2. Operating ratio. Act.	Est.	3. Net earnings.	4. Net earnings capitalized at 6 %.	5. State assessment.	6. % of ass't to capitalized value.
W of Ala	63.4	63.4	211 965	3 532 751	4 343 000	122.93
A & W. P	60.03	60.03	213 456	3 557 607	1 659 850	46.6
C of Ga	63.05	63.05	1 160 986	19 349 933	7 749 026*	40.
G S & F	70.22	66.66	289 005	4 828 422	1 555 350	32.1
Plant Sys	76.	66.66	751 450	12 524 172	8 457 464	67.5
So	74.2	66.66	1 146 447	19 107 465	9 074 746	47.4
W & T	62.	62.	35 041	584 021	194 194	33.7
All railroads in State	71.45	66.66	4 810 565†	80 176 083	39 730 559*	49.55

*There has been deducted $804,069, on account of rolling stock on non-taxable lines, and property not used for railroad purposes.

†There has been deducted from net earnings on all railroads in State, viz $6,152,822.65

the following net earnings of non-taxable lines:

Central of Georgia	$408 139 62	
Georgia	327 219 74	
Western & Atlantic	606 898 30	
		1 342 257 66
leaving net earnings, as stated		$4 810 564 99

179 1898.

1. Railroad.	2. Operating ratio. Act.	Est.	3. Net earnings.	4. Net earnings capitalized 6 %.	5. State assessment.	6. % of ass't to capitalized value.
W of Ala	59.5	59.5	258 059	4 300 992	3 743 000	87.02
A & W P	60.35	60.35	219 830	3 663 835	1 602 027	43.72
C of Ga	60.59	60.59	1 250 838	20 847 301	8 805 401*	42.24
G S & F	68.4	66.66	287 847	4 797 453	1 617 661	33.72
Pl't Sys	72.7	66.66	743 711	12 378 516	7 312 554	59.07
So	70.76	66.66	1 138 873	18 981 223	10 035 270	52.9
W & T	60.74	60.74	34 214	570 243	211 637	37.11
All railroads in State	69.2	66.66	4 781 414†	79 690 234	40 096 467*	50.31

*There has been deducted $988,349, on account of rolling stock on non-taxable lines, and property not used for railroad purposes.

†There have been deducted from net earnings of all railroads in State, viz $6,101,683.94

the following net earnings of non-taxable lines.

Central of Georgia	$392 277 20	
Western & Atlantic	584 408 07	
Georgia	342 534 63	
		1 319 269 90
leaving net earnings, as stated		$4 781 414 04

180 (1900.)

1. Railroad.	2. Operating ratio. Act.	Est.	3. Net earnings.	4. Net earnings capitalized at 6 %.	5. State assessment.	6. % of ass't to capitalized value.
W of A	60.9	60.9	$261 686 17	$4 361 436	4 443 000	101.87
A & W P	60.75	60.75	238 127 95	3 968 799	1 585 953	39.9
C. of Ga	61.78	61.78	1 295 228 53	21 587 142	8 461 109*	39.1
G S & F	72.94	66.66	317 912 65	5 298 878	1 894 403	35.7
Plt. Sys	76	66.66	871 756 96	14 529 283	7 721 352	53.1
So	74.75	66.66	1 358 848 92	22 647 482	10 725 178	47.3
W & T	65.28	65.28	39 665 51	661 092	403 872	61.
All railroads in State	70.14	66.66	5 632 084 00†	93 868 066	43 127 792	45.94

*There has been deducted $823,568 on account of rolling stock on non-taxable lines and property not used for railroad purposes.

†There have been deducted from net earnings of all railroads in State, viz $7,029,103.45

the following net earnings of non-taxable lines:

Central of Georgia	$422,318.03	
Western & Atl	582,732 33	
Georgia	391,969.09	
		1 397 019 45
leaving net earnings as stated		$5 632 084 00

181 1899.

W of A	64.5	64.5	$214 444 61	$3 574 076	$1 443 000	124.31
A & W P	60.45	60.45	227 496 39	3 791 606	1 636 732	43.16
C of Ga	62.35	62.35	1 033 522 00	18 225 366	8 076 869*	44.31
G S & F	68.87	66.66	316 542 35	5 275 706	1 631 655	30.81
Plt. Sys	74.19	66.66	818 810 25	13 646 837	7 244 123	53.08
So	75 2	66.66	1 211 368 14	20 189 469	10 034 562	49.70
W & T	67.08	66.66	30 161 57	502 743	314 925	62.64
All railroads in State	70.8	66.66	5 107 439 17†	85 123 986	40 985 230*	48.14

*There has been deducted $914,969 on account of rolling stock on non-taxable lines and property not used for railroad purposes.

†There have been deducted from net earnings of all railroads in State, viz $6,348,994.00

the following net earnings of non-taxable lines:

Central of Georgia	$356,549.78
Western & Atl	571,732.91
Georgia	313,272.14
leaving net earnings as stated	$5,107,439.17

182 1902.

1. Railroad.	2. Operating ratio. Act.	Est.	3. Net earnings.	4. Net earnings capitalized at 6%.	5. State assessment.	6. % of assessment to capitalized value.
W of Ala.	64.8	64.8	$290 202	$4 836 714	$5 443 000	112.53
A & W P	65.57	65.57	255 009	4 250 152	1 715 802	40.37
C of Ga.	67.60	66.66	1 564 296	26 071 815	11 762 039*	45.11
G F & A	58 78	58.78	28 223	470 389	242 855	51.62
G S & F	67.06	67.06	355 023	5 917 053	2 305 860	38.96
Plt. Sys	69.04	66.66	951 552	15 856 213	7 968 622	50.24
S A L	81.19	66.66	696 172	11 602 867	7 644 696	65.88
So	70.15	66.66	1 631 065	27 184 426	11 118 725	40.87
W & T.	61.23	61.23	61 968	1 032 807	453 631	43.92
All railroads in State	70.48	66.66	6 319 695*	105 328 257	54 150 954*	51.43

* There has been deducted $1,061,619. on account of rolling stock on non taxable lines, and property not used for railroad purposes.

† There have been deducted from net earnings of all railroads in State, viz ... $7,748 741 84

the following net earnings of non-taxable lines:

Central of Ga	$335 736 20	
Georgia	427 583 27	
Western & Atlantic	665 726 95	
		1 429 046 42

leaving net earnings as stated ... $6 319 695 42.

183 1901.

W. of A	64.5	64.5	$262 426 14	$4 373 768	$4 743 000	108.44
A & W P	61.89	61.89	267 704 79	4 461 746	1 655 125	37.09
C of Ga.	63.48	63.48	1281 147 59	21 385 246	9 250 769	43.12
G S & F	64.54	64.54	362 580 05	6 043 000	2 039 973	33.76
Plt. Sys.	71.87	66.66	877 859 70	14 630 995	7 681 951	52.54
*S. A. L.	75.55	66.66	992.310 00	16 538 500	5 906 931	35.71
So.	72.37	66.66	1480 019 16	24 666 986	10 819 657	43.86
W & T.	66.66	66.66	55 605 06	926 751	441 007	47.62
All railroads in State	69.43	66.66	5 969 829 33†	99 497 156	46 044 870	46.28

* Includes F. C. & P. G. & A., G. C. & N.

There has been first deducted $894,929. on account of rolling stock on non-taxable lines and property not used for railroad purposes.

† There have been deducted from net earnings of all railroads in State, viz. ... $7,403,950.00

the following net earnings of non taxable lines:

Central of Georgia	$411 516 49	
W & Atlantic	603 034 17	
Georgia	419 570 03	
		1,434,120.69

leaving net earnings as stated ... $5,969,829.33

184 (1904.)

Railroad.	Operating ratio.		Net earnings.	Net earnings capitalized at 6 %.	State assessment.	% of ass't to capitalized value.
W of Ala	60.95	60.95	$364 716	$6 078 607	$5 943 000	97.76
A & W P	60.18	60.18	321 897	5 364 962	1 898 346	35.38
At. & Bir	59.21	59.21	106 172	1 769 548	1 398 592	79.03
A C L	62.63	62.63	1 829 973	30 499 568	10 590 608	34.72
C of Ga	73.07	66.66	2 315 387	38 589 789	11 749 059*	38.19
C F & A	72.70	66.66	39 585	659 754	470 783	71.35
C S & F	68.41	66.66	459 977	7 666 293	3 904 313	50.92
S A L	69.52	66.66	987 719	16 461 997	8 986 409	54.58
So	76.40	66 66	1 911 328	31 855 471	12 660 357	39.74
W & T	64.76	64.76	59 713	995 231	527 169	52.96
All railroads in State	70.83	66.66	8 493 299†	141 554 986	62 846 754*	44.39

* There has been deducted $189,900 on account of rolling stock on non-taxable lines.

† There have been deducted from net earnings of all railroads in State, viz 10 247 338 50

the following net earnings of non-taxable lines:

Central of Georgia	$374 165 02	
Western & Atlantic	850 365 10	
Georgia	529 509 19	
		1 754 039 31

leaving net earnings, as stated 8 493 299 19

185 (1903.)

1. Railroad.	2. Operating ratio. Act.	Est.	3. Net earnings.	4. Net earnings capitalized at 6%.	5. State assessment.	6. % of ass't to capitalized value.
W of A	60.5	60.5	$328 602 00	$5 476 715	$5,943,000	108.51
A & W P	61.07	61.07	297 303 75	4 955 062	1 904 970	38.44
A & B	56.65	56.65	65 404 70	1 090 078	832 000	76 32
A C L	68.93	66.66	979 627 73	11 327 128	10 640 492	65 17
C of Ga	70 69	66.66	1576 300 00	26 271 666	14 914 678*	56.77
G F & A	72.94	66 66	25 436 51	423 941	456 946	107.7
G S & F	68.23	66.66	369 879 71	6 164 661	3 950 958	64.09
S A L	71.70	66.66	893 661 79	14 894 363	8 508 543	57.12
So	73.96	66.66	1645 031 84	27 417 197	11 993 829	43.49
W & T	66.11	66.11	48 619 82	810 330	562 563	69.42
All railroads in State	70.68	66.66	6 729 458 07	112,057 635	61 402 081*	54.79

* There has been deducted from total assessment $501,905. on account rolling stock and property on non-taxable lines, and scrap iron.

† There have been deducted from net earnings of all railroads in State viz $8 317 589 62

the following net earnings of non-taxable lines.

Central of Georgia	$346,928.54	
W. & Atlantic	741,066.53	
Georgia	500,136.48	
		1 588 131 55

leaving net earnings as stated $6 729 458 07

186 The following table compiled from the reports of the Railroad Commission of Georgia and the Interstate Commerce Commission was introduced to show percentage of operating expenses to gross earnings in the United States, in Group "V" (Kentucky, Tennessee, Mississippi, Alabama, Georgia and Florida) and in Georgia.

A Statement of Operating Ratio.

	1897.	1898.	1899.	1900.
All railroads United States	68.35	69.46	69.69	70.82
All railroads Group "V"	.....	69.20	.....	71.70
All railroads State of Georgia	71.45	69.2	70.8	70.14
	1901.	1902.	1903.	1904.
All railroads United States	70.85	70.87	72.17	72.77
All railroads Group "V"	72.64	73.78	74.93	74.82
All railroads State of Ga	69.43	70.48	70.68	70.83

Averages for eight years:

All railroads United States	70.62	
" " Group "V"	72.84	(six years)
" " in Georgia	70.37	

187 JOHN BELL, for plaintiff testified:

I have read the affidavit of George H. Richter, filed in this cause, in which, as a basis of calculation of net earnings for all of the railroads in the State of Georgia, for the years 1895 to 1904, inclusive, the operating ratio of 66⅔% was used in place of the actual operating ratio of all of the said roads, as appear from the reports of the Railroad Commission of Georgia, and as is set out in detail in the ten tables attached to the said affidavit.

I have prepared the following table giving the same results as ascertained by George H. Richter for all of the railroads in the State of Georgia, except that, instead of using the arbitrary operating ratio of 66⅔%, used by the Comptroller-General, I have used the actual operating ratio as stated above thus obtaining the net earnings, which, when capitalized at 6%, show the theoretical values of all railroads, as claimed by the Comptroller-General with these I have compared the assessments on said railroads, using the same figures as used *as used* in the affidavit of George H. Richter, and, in the last column have shown the percentage ratio which the tax assessments on all railroads in Georgia for each of the years bears to the theoretical value thus ascertained.

For the whole ten years, using an average of the figures for each of the ten years, the assessments for taxation of all railroads
188 in Georgia was 56.96 of the theoretical value of all of the railroads in Georgia, as ascertained by the Comptroller-General's method, save only that the actual operating ratio was used instead of his theoretical operating ratio. This percentage of 56.96% is to be compared with the percentage of 109.98 which is the percentage that the assessment on the Western of Alabama bears to the theoretical value of that property ascertained by the same method, the following is the table referred to:

Year.	Operating ratio.	Net earnings.	Net earnings capitalized at 6%.	State assessment.	6% of assessment to capitalized value.
1895	72.12	$3,558,794	$59,313,233	$37,134,622	62.60
1896	73.22	3,673,263	61,221,050	40,509,853	66.16
1897	71.45	4,120,249	68,670,816	39,730,559	57.85
1898	69.2	4,501,186	75,019,766	40,096,467	53.44
1899	70.8	4,474,116	74,568,600	40,958,230	54.96
1900	70.14	4,054,221	84,237,016	43,127,792	51.19
1901	69.43	5,374,930	89,582,166	46,044,870	51.39
1902	70 48	5,596,722	93,278,700	54,150,954	58.05
1903	70.68	5,919,231	96,970,516	61,402,081	63.32
1904	70.83	7,432,485	123,874,750	62,846,754	50.73
Average	70.83	4,970,519	82,673,661	46,602,918	56.96

189 For the purpose of further showing the excessive overvaluation of the stock of the Western Railway of Alabama under the methods of valuation by capitalization adopted by the Comptroller-General, the plaintiff offered financial reports of the Western Railway of Alabama for the years 1895 and 1904, and also financial reports of the Atlanta & West Point Railroad Company, the highest taxed road in the State of Georgia, for the years 1895 and 1904, the material portions of said reports being as follows:

190 Atlanta and West Point Railroad Company.

(1) Line of Road owned.—Atlanta to West Point, Ga. 86.20 m. Leased: Atlanta Belt Line: Oakland to Atlanta, Ga. 6.00 m.–92.20 m. 2d track, 211 m., sidings, etc., 17.66 miles. Gauge, 4 ft. 9 in. Rail (steel), 56 to 80 lbs.

(2) History.—Chartered in 1847 under the name of Atlanta and La Grange R. R. Co., road opened to Palmetto, 18.5 miles from East Point, March 17, 1871, to Newnan, 33 miles, September 9th, 1851, to La Grange, 64.75 miles, February 15, 1853, and to West Point, May 15, 1854. In 1860, the present name was adopted. The extension from East Point to Atlanta, 6.5 miles, was built in 1889, the tracks of the Central of Georgia having been used until then to gain entrance to Atlanta.

(3) Rolling Stock, June 30, 1904.—Locomotives, 15. Cars—passenger, 14, combination, 2, dining, 1, baggage and postal, 7, private, 1, freight (box, 351, flat 121, coal, 128, refrigerator, 2), 611, service, 41—total cars, 643.

(4) Operations, year ending June 30, 1904.—Train mileage—passenger, 307,788, freight, 140,255—total, 448,043 miles. Passengers carried 348,246, carried one mile, 13,197,985, average mile rate, 2.26 cents. Tons freight moved, 522,180, moved one mile, 35,839,686, average ton-mile rate, 1.31 cents.

Earnings.	1902-03.	1903-04.
Passenger	$273,191.18	$298,684.14
Freight	449,964.93	468,132.64
Mail and Express	75,669.26	78,391.18
Miscellaneous	9,547.38	8,439.20
Totals	$808,372.75	$853,647.16
Averages per mile	9,377.87	9,903.10

Expenses.	1902-03.	1903-04.
Maint. of Way & Strs.	$112,601.88	$106,824.14
Maint. of Equipment	124,102.61	129,957.70
Cond. Transportation	211,963.45	236,707.17
General Expenses	37,807.07	37,767.38
Totals	$486,475.01	$511,246.39
Averages per mile	5,643.56	5,930.93

Net earnings (40.11 p. c.), $342,400.77, other receipts, $6,019.07—total $348,419.84 Payments: Interest on funded debt, $73,932, taxes, $25,650.92, reserve for improvements, $152,000, rental Atlanta Belt Line, $16,000, Atlanta Terminal Co., Peters Street Viaduct, $4,490.05—total, $272,072.97. Surplus, $76,346.87, surplus forward, $119,166.96—total $195,513.83. Deduct dividends (J. & J., 3 p. c. each), $73,932. Balance, surplus, June 30, 1904, $121,581.83.

(5) Capitalization, cost of property and results from operations for ten years ending June 30:—

	Capital stock.	Certificates of indebt's.	Cost of road.	Miles operated.	Gross earnings.	Net earnings.
1895	$1,232,200	$1,232,200	$2,464,400	86.2	$474,072	$197,007
1896	1,232,200	1,232,200	2,464,400	86.2	534,115	213,456
1897	1,232,200	1,232,200	2,464,400	86.2	554,447	219,830
1898	1,232,200	1,232,200	2,464,400	86.2	575,259	227,496
1899	1,232,200	1,232,200	2,464,000	86.2	606,664	238,128
1900	1,232,200	1,232,200	2,464,000	86.2	702,472	267,705
1901	1,232,200	1,232,200	2,464,400	92.2	740,689	255,009
1902	1,232,200	1,232,200	2,464,400	92.2	763,712	297,304
1903	1,232,200	1,232,200	2,464,400	92.2	808,373	321,898
1904	1,232,200	1,232,200	2,464,400	92.2	853,647	342,401

191	Net income.	First charges.	Better-ments.	Divi-dends.	Total payments.	Balance surplus.
1895	$199,953	$93,371	. . . .	$73,932	$167,303	$32,650
1896	219,815	91,331	$53,156	73,932	219,669	146
1897	232,849	92,639	.....	73,932	231,282	1,567
1898	244,377	95,673	.....	73,932	240,394	3,983
1899	245,924	95,356	.....	73,932	244,713	1,211
1900	278,326	95,591	$75,000	73,932	256,073	22,253
1901	258,841	104,493	$56,088	73,932	248,816	10,025
1902	302,276	113,832	90,964	73,932	278,728	23,648
1903	329,239	112,078	140,000	73,932	326,010	3,229
1904	348,420	115,583	156,490	73,932	346,005	2,415

(6.) General Balance Sheet, June 30, 1904.

Franchise and Property	$2,464,400.00
Real Estate	27,891.45
Stocks Owned	27,500.00
Material and Supplies	45,315.13
Current Accounts	31,682.23
Cash	497,008.99
Deferred Assets	14,251.64
Total Assets	$3,108,049.44
Capital Stock ($100 shares)	$1,232,200.00
Certificates of Indebt's	1,232,200.00
Current Liabilities	85,927.12
Rent Accrued, Atla Belt Line	4,000.00
Taxes Accrued, not Due	10,547.88
Reserve for Improvements	421,592.61
Profit and Loss	121,581.83
Total Liabilities	$3,108,049.44

(7.) Certificates of Indebtedness.—The certificates of indebtedness were issued in 1891 in the shape of a dividend. They are for $100 each, or multiples thereof, in registered form bearing interest at 6 p. c. per annum, payable Jan. and July, in Atlanta, Ga. They are dated July, 1881, and are payable at the option of the Company.

192 Atlanta and West Point Railroad Company.

Line of Road Owned.—Atlanta to West Point, Ga	$6.20	m.
Leased: Atlanta Belt Line: Oakland to Atlanta, Ga	6.00	m.
	92.20	miles.

2d track, 2.11 m., sidings, etc., 17.66 miles. Gauge, 4 ft. 9 in.
Rail (steel) 56 to 80 lbs.

Rolling Stock, June 30, 1903.—Locomotives, 21. Cars—Passenger, 14, combination 1, dining (½ interest), 1, baggage, mail, and postal, 6, freight, (box, 28, flat 121, coal 60, refrigerator, 2), 611, service, 36—total cars 669.

Operations, year ending June 30, 1903.—Train mileage-passenger, 274,118, freight, 162,093—total, 436 / 211 miles. Passengers carried, 301,646, carried one mile, 12,873,696, average mile rate, 2.12 cents. Tons freight moved, 540,169, moved one mile, 35,487,160, average ton-mile rate, 1.27 cents.

Earnings.	1902-03.	1902-03.
Passenger	$266,274.83	$273,191.18
Freight	414,067.28	449,964.93
Mail and Express	74,117.38	75,669.26
Miscellaneous	9,252.62	9,547.38
Totals	$763,712.11	$808,372.75
Averages per mile	8,859.77	9,377.87

Expenses.	1901-02.	1902-03.
Maint. of Way & Struc	$113,455.24	$112,601.88
Maint. of Equipment	102,886.93	124,102.61
Cond. Transportation	210,177.90	211,963.45
General Expense	39,888.29	37,807.07
Totals	$466,408.36	$486,475.01
Averages per Mile	5,410.77	5,643.56

Net earnings (39.82 p. c.). $321,897.74, other receipts, $7,341.29—total, $329,239.03, Payments: Interest on funded debt, $73,932, taxes, $22,145.62, reserve for improvements, $140,000, rental Atlanta Belt Line, $16,000—total, $252,077.62. Surplus, $77,161.41, surplus forward, $115,937.56—total, $195,098.96. Deduct dividends (6 p. c.), $73,932, Balance, surplus, June 30, 1903, $119,166.96.

General Balance Sheet, June 30, 1903.

Franchise and Property	$2,464,400.00
Real Estate	18,680.45
Stocks Owned	2,500.00
Material and Supplies	43,774.91
Current Accounts	61,652.95
Cash on hand and in Banks	326,082.26
Cash in Transit	11,094.18
Total Assets	$2,928,184.75
Capital Stock. ($100 shares)	$1,232,200.00
Certificates of indebtedness	1,232,200.00
Interest accrued not yet payable	36,966.00
Taxes Accrued, not Due	10,547.88
Reserve for Improvements	129,759.13
Current Liabilities	167,344.78
Profit and Loss	119,166.96
Total Liabilities	$2,928,184.75

Certificates of Indebtedness. The certificates of indebtedness were issued in 1881 in the shape of a dividend. They are for $100 each, or multiples thereof, in registered form, bearing interest at 6 p. c. per annum, payavle Jan. and July, in Atlanta, Ga. They are dated July, 1881, and are payable at the option of the company.

193 Atlanta and West Point Railroad Company.

Line of Road.—Atlanta, Ga., to West Point, Ga., 86.20 miles. Sidings and other tracks, 6.29 miles. Gauge, 4 ft. 9 in. Rail (steel), 60 lbs.

Rolling Stock, June 30, 1895.—Locomotives, 15. Cars—passenger, 9, baggage, mail, and express, 7, freight (box, 174, flat, 22, coal, 42, caboose, 6), 244, other, 7,—total cars, 267. Twenty-three of the coal cars are leased.

Operations, years ending June 30, 1895.—Train mileage—passenger, 242,115, freight, 94,019, other, 6,765—total, 342,899 miles. Passengers carried, 220,425, one mile, 7,054,080, average mile rate, 2,391 cents. Tons freight moved, 214,905, one mile, 14,257,992, average ton-mile rate, 1.73 cents.

Earnings—Passenger	$168,676.16
Freight	246,130.55
Mail and Express	54,731.13
Miscellaneous	4,484.46
Total ($5,504.84) per mile	$474,022.30
Express—Transportation	$150,461.76
Motive Power & Cars	49,409.01
Maint. of Way & Bldgs	43,321.63
General Expenses	23,823.35
Total ($3,216.99 per mile)	$277,015.75

Net earnings (41.57 P. C.), $197,006.55, other receipts, $2,946.23—total $199,952.78. Payments: Interest on bonds, $73,932, dividends on stock (6 p. c.), $73,932, taxes, $15,431.32, sundries, $4,007.79—total, $167,303.11. Surplus, $32,649 67, surplus forward (177,388.74) less deduction, $38,335.66), $139,053.08—total, $171,702.75.

General Balance Sheet, June 30, 1895.

Road, Equipment & Real Estate	$2,464,400.00
Material and Fuel	10,058.61
Bills Receivable	29,893.83
Current Accounts	36,427.96
Cash on Hand	155,667.05
	$2,696,447.45
Cap. Stock	$1,232,200.00
Cert'f't's of Indebt's	1,232,200.00
Current accounts	60,344.70
Profit & Loss	171,702.75
	$2,696,447.45

The debenture certificates were issued in 1881 in the shape of a dividend. They are for $100 each or multiples thereof, in registered form, bear interest at 6 p. c. per annum, payable Jan. and July, are dated July, 1881, and payable at option of the Company.

Dividends.—From Jan. 1855, to Jan., 1896, this company paid cash dividends ranging from 8 to 6 p. c.—an aggregate of 262 p. c.

194 Western Railway of Alabama.

(1) Line of Road.—Selma, Ala., to West Point, Ga., 132.01 miles. Sidings, 36.14 miles. Gauge, 4 ft. 9 in. Rail (steel), 56, 60, 60½, 70 and 80 lbs.

(2) The Western Railroad of Alabama was formed by the consolidation Sept. 1, 1870, of the Montgomery and West Point (chartered in 1834, road opened in 1854) and the Western Ry. of Alabama (opened in 1870). Its line extended from Selma, Ala., to West Point, Ga., 138 miles, with a branch from Opelika, Ala., to Columbus, Ga., 29 miles. On the 10th of May, 1875, the road was sold under foreclosure and purchased for joint account of the Georgia Railroad and Banking Co. and the Central Railroad and Banking Co. of Georgia. In 1883, the Columbus Branch was formally deeded to the Columbus and Western Railroad Co., the consideration being that the Central of Georgia should assume bonds of the Western of Alabama to the amount of $269,000, redeemed by it in 1880 and held for settlement. The existing corporation (Western Ry. of Alabama) was chartered March 15, 1883, and took possession of the road April 1, 1881.

(3) Rolling Stock, June 30, 1904.—Locomotives, 16, Cars—passenger, 14, baggage, mail and postal, 7, café 1, private, 1, freight (box, 219, flat, 44, stock, 15, coal, 84, refrigerator, 9, furniture, 97, caboose, 4), 472, service 22, total, 517.

(4) Operations, year ending June 30, 1904.—Train mileage—passenger, 293,624, freight, 153,310, mixed, 31,137, other, 14,749—total, 492,820 miles. Passengers carried, 315,404, carried one mile, 12,997,784, average mile rate, 2.44 cents. Tons freight moved, 665,468, moved one mile, 45,315,393, average ton-mile rate, 1.18 cent.

Earnings.	1902-03.	1903-04.
Passenger	$299,080.50	$316,585.15
Freight	534,640.00	534,253.08
Mail and Express	75,908.81	78,335.30
Miscellaneous	24,232.87	21,264.59
Totals	$933,862.18	$950,438.12
Averages per mile	7,074.18	7,199.74

Expenses.	1902-03.	1903-04.
Maint. of Way & Strs.	$161,210.91	$162,932.48
Maint. of Equipment	120,453.84	129,502.35
Cond. Transportation	250,530.88	268,095.31
General Expense	36,950.09	41,381.59
Totals	$569,145.72	$601,911.73
Averages per mile	4,311.38	4,559.59

Net earnings, 1903-04 (36.67 p. c.), $348,526.39, add other receipts, $2,755.01—total, $351,281.40. Payments: Interest on funded debt, $69,435, taxes, $30,363.13, reserve for improvements, $135,000—total, $234,800.13. Surplus, $116,481.27, surplus forward, $105,404.64—total, $221,885.91. Deduct dividends (F. & A., 2 p. c. each), $120,000. Surplus June 30, 1904, $101,885.91.

195 (5.) Capital stock, bonded debt, revenue, etc., for ten years ending June 30:—

Years.	Capital stock.	Bonded debt.	Cost of road, etc.	R. R. operated.	Gross earnings.	Expenses and taxes.
1895.....	$3,000.000	$1,543,000	$4,543,000	133.10	$523,283	$369,123
1896.....	3,000.000	1,543,000	4,543,000	132.01	579,804	391,740
1897.....	3,000.000	1,543,000	4,543,000	132.01	636,533	403,993
1898.....	3,000.000	1,543,000	4,543,000	132.01	603,630	414,391
1899.....	3,000.000	1,543,000	4,543,000	132.01	698,335	430,832
1900.....	3,000 090	1,543,000	4,543,000	132 01	739,746	507,522
1901.....	3,000.000	1,543,000	4,543,000	132.01	824,910	564,858
1902..	3,000.000	1,543,000	4,543,000	132.01	832,550	534,978
1903.....	3,000.000	1,543,000	4,543,000	132.01	933,862	599,131
1904.....	3,000.000	1,543,000	4,543,000	132.01	950,438	632,277

Years.	Net earnings.	Net income.	Interest paid.	Dividends paid.	Total payments.	Balance (— or +)
1895.....	$154,160	$162,830	$69,435	$60,000	$129,636	+ 33,194
1896.....	188,064	192,910	69,435	60,000	173,729	+ 19,181
1897.....	232,540	235,746	69,435	60,000	199,091	+ 36,746
1898.....	189,239	194,467	69,435	.....	102,169	+ 92,298
1899.....	237,503	246,029	69,435	60,000	335,037	— 89,008
1900.....	232,224	244,757	69,435	210,000	280,577	— 35,280
1901.....	260,052	265,211	69,435	120,000	324,225	— 59,014
1902.....	297,572	301,903	69,435	120,000	277,522	+ 24,381
1903.....	334,731	339,234	69,435	120,000	353,890	— 14,656
1904.....	318,161	320,916	69,435	120,000	324,435	— 3,519

(6.) General Balance Sheet, June 30, 1904.

Franchise and Property	$4,543,000.00
Securities Owned	2,550.00
Real Estate	51,228.86
Material and Supplies	93,615.92
Current Accounts	141,363.47
Cash on Hand and on Deposit	178,220.65
Cash in Transit	12,051.82
Unadjusted Freight Claims	21,904.28
Insured Premiums—Unexpired	6,682.44
Total Assets	$5,050,617.44
Capital Stock ($100 shares)	$3,000,000.00
Funded Debt Outstanding	1,543,000.00
Current Liabilities	218,147.17
Interest on Bonds Accrued not Due	17,358.75
Taxes accrued not due	10,964.63
Reserve for Improvements	159,260.98
Profit and Loss	101,885.91
Total Liabilities	$5,050,617.44

196 Western Railway of Alabama.

Line of Road.—Selma, Ala., to West Point, Ga., 132.01 miles. Sidings, 33.86 miles. Gauge, 4 ft. 9 in. Rail (steel), 56, 60, 60½, 70 and 80 lbs.

Rolling Stock, June 30, 1903.—Locomotives, 14, Cars—passenger, 15, baggage, mail and postal, 7, café, 1, private, 1, freight, (box, 150, flat, 45, stock, 15, coal, 104, refrigerator, 4, furniture, 97, caboose, 4), 419, service, 21—total 464.

Operations, year ending June 30, 1903.—Train mileage—passenger, 268,001, freight, 166,036, mixed, 37,737, other, 8,582—total, 480,356 miles. Passengers carried, 317,833, Carried one mile, 13,240,784, average mile rate, 2.26 cents. Tons freight moved, 675,576, moved one mile, 44,937,358, average ton-mile rate, 1.19 cent.

Earnings.	1901-02.	1902-03.
Passenger	$275,811.29	$299,080.50
Freight	457,301.23	534,640.00
Mail and Express	75,854.00	75,908.81
Miscellaneous	25,583.49	24,232.87
Totals	$832,550.01	$933,862.18
Averages per mile	6,306.72	7,074.18

Expenses.	1901-02.	1902-03.
Maint. of Way & Struc	$132,415.71	$161,210.91
Maint. of Equipment	94,831.46	120,453.84
Cond. Transportation	238,766.90	250,530.88
General Expense	37,933.02	36,950.09
Totals	$503,947.09	$569,145.72
Averages per mile	3,817.49	4,311.38

Net earnings, 1902-03 (39,05 p. c.), 364,716.46, add other receipts, $4,502.79—total, $369,219.25. Payments: Interest on funded debt, $69,435, taxes, $29,985.45, reserve for improvements, $145,000, betterments to property, $19,455 22, total, $263,875.67. Surplus, $105,343.58, surplus forward, $120,061.06—total, $225,404.64. Deduct dividends, (4 p. c.), $120,000. Surplus, June 30, 1903, $105,404.64.

General Balance Sheet. June 30, 1903.

Franchise and Property	$4,543,000.00
Securities Owned	4,500.00
Real Estate	47,441.91
Material and Supplies	123,219.11
Current Accounts	133,026.89
Cash on Hand and on Deposit	311,964.41
Cash in Transit	10,853.81
Total Assets	$5,174,006.15

Capital Stock ($100 shares)	$3,000,000.00
Funded Debt Outstanding	1,543,000.00
Current Liabilities	246,885.02
Interest on Bonds Accrued, not Due	17,358.75
Taxes Accrued, not Due	10,964.63
Reserve for Improvements	250,393.09
Profit and Loss	105,404.64
Total Liabilities	$5,174,006.13

197 Funded Debt.—Funded debt consisted June 30, 1903, of 1st gold 4½ s. of Oct. 1, 1918.

The bonds are guaranteed by the Georgia R. R. and Banking Co., and the Central of Ga. Ry. Co., by whom the capital stock is jointly owned. Trustees: Metropolitan Trust Co., New York.

198 Western Railway of Alabama.

Line of Road.—Selma, Ala., to West Point, Ga., 132.10 miles. Sidings, 18.16 miles. Gauge, 4 ft. 9 in. Rail (steel), 56, 60 and 60½ lbs.

Rolling Stock, June 30, 1895.—Locomotives, 13. Cars—passenger, 10, baggage, etc., 7, freight, (box, 277, flat, 24, coal, 54, stock, 10, caboose, 3), 368, other 6—total, 391. of which 100 box and 23 coal cars are leased.

Operations, year ending June 30, 1895.—Train mileage—passenger, 233,518, freight, 98,850, mixed, 28,704, other, 18,450—total, 379,522 miles. Passengers carried, 153,389, carried one mile, 6,981,080. average mile rate, 2.55 cents. Tons freight moved, 290,080, moved one mile, 17,353,446, average ton-mile rate, 1.58 cents.

Earnings.

Passenger	$178,242.27
Freight	275,185.02
Mail and Express	59,453.69
Miscellaneous	10,402.17
Total ($3,963.96 per mile)	$523,283.15

Expenses.

Transportation	$183,224.19
Motive Power & Cars	58,422.21
M. Way & Buildings	75,959.39
General	28,453.30
Total ($2,621.46 per mile)	$346,059.09

Net earnings (33.9 p. c.), $177,224.06. Add interest and ecchange, $1,631.23, old suspense account prior to June 30, 1894, $7,048.73—total, $185,894.02. Payments: Interest on bonds, $69,435, taxes, $23,064.17, dividends, (2 p. c.), $60,000, other, $201.30—total, $152,700.47. Surplus for year, $33,193.55. Surplus forward ($135,784.03, less sundry deductions, $26,714.66), $109,069.37—total, surplus, June 30, 1895, $142,262.92.

General Balance Sheet, June 30, 1895.

Cost of Road, Equipment, Real Estate	$4,543,000.00
Materials and Fuel on hand	35,594.08
Current Accounts	119,187.26
Bills Receivable	30,861.44
Cash on Hand	55,274.50
New Equipment	1,252.86
Total Assets	$4,785,170.14
Capital Stock	$3,000,000.00
Funded Debt Outst'd'g	1,543,000.00
Engine Trust Notes	1,252.86
Current Accounts	98,654.36
Profit and Loss	142,262.92
Total Liabilities	$4,785,170.14

Funded debt consisted, June 30, 1895, of 1st m'tg's 4½ p. c. 30 yr. gold coup. bonds, due Oct. 1, 1918, interest April and Oct., at the office of the Guaranty Trust Co., New York, N. Y., guaranteed by the Georgia R. R. and Banking Co. and the Central of Ga. Ry. Co. by whom the capital stock is jointly owned. Trustee, Metropolitan Trust Co., New York.

199 (22.) WM. E. BUSH, testified by affidavit:

That he is now and for the past fourteen years has been engaged in the Stock and Bond brokerage business in Augusta, Ga., and is familiar with the quotations and market values of stocks and bonds dealt with in said City and State, especially so with the quotations and market prices during said years of stock of the Augusta & Savannah Railroad, the Southwestern Railroad, the Atlanta & West Point Railroad, and the Georgia Railroad & Banking Company, which are among the most active stocks in the State of Georgia, and dealt in more largely, probably, than any other Railroad stock in the State,—said stocks being particularly sought after by those desiring holdings as an investment, and said stocks being largely owned by residents of the State of Georgia;

That prior to 1896, the stock of the Augusta & Savannah Railroad and of the Southwestern Railroad paid 7% dividends under and by virtue of contracts of rental of said Roads by the Central Railroad and Banking Company, that from 1896 to 1904, said stocks paid 5% guaranteed dividends by virtue of rentals of the properties thereof to the Central of Georgia Railway Co., and that the Atlanta & West Point Railroad, during all of said years invariably paid 6% dividends annually, besides adding to its surplus account,
200 which surplus, at one time attained to a sum large enough to warrant the Company declaring a cash dividend of 25%.

That the Georgia Railroad & Banking Co., since 1893 has paid dividends of 11% by virtue of a lease for 99 years at an annual rental of $600,000; that said stocks are the most valuable stocks which

are generally held and dealt in by persons all over the State, and the prices paid therefor are standards by which fairly to measure other stocks in the State.

That about the year 1893, many of the Railroads in Georgia were in the hands of Receivers, all stocks being greatly depressed in their market value, and selling at prices greatly less than said stocks are selling during 1905 and 1906, even though they then paid the same dividends and were supported by the same rental contracts and guarantees as exist at the present time; that this depression continued until about 1896, when there began a steady but gradual advance; that the depression and advance characteristic of these stocks were coincident with the depression and advance of other securities and railroad stocks in Georgia, and Deponent attaches hereto a tabulated statement marked Exhibit A. showing the market quotations of each of said stocks for the years 1893 to 1904; that said figures fairly represent the value during the months of May during each of said years.

201 Deponent further avers that while Net Earnings are a factor to be considered in determining the value of stocks, the principle element is dividends declared, and the business expectation that dividends will or will not be permanently paid in future; that, generally speaking the Surplus does not begin sensibly to affect the value of stocks until such surplus has reached something like 20% of the Capital; that this is due to the fact that even after Betterments have been paid, sound business principles require a reserve for Depreciation, and Deponent knows of no railroad or other stock in Georgia, the market value of which could be determined by a mere inspection of the Annual Balance Sheet, showing Assets and Liabilities, Gross Earnings, Operating Expenses, Interest, Charges, Amounts paid out for Betterments and dividends; and that physical condition is an element also to be considered;

That in the light of conditions as they exist- in each of the years 1895 to 1904, and comparing the Western of Alabama Railway stock, which is a non-guaranteed stock, with the Augusta & Savannah Railroad, the Southwestern Railroad, and the Georgia Railroad & Banking Company, which are guaranteed stock, and the Atlanta & West Point Railroad, which, while not a guaranteed stock, was a constant paying dividend stock, and considering the market

202 value of stocks of all sorts obtaining during said years, Deponent says that, in his opinion, the market value of the Western of Alabama Railway stock for each of the years would not exceed the amounts following:—

1895	40
1896	40
1897	45
1898	50
1899	70
1900	60
1901	70
1902	80
1903	90
1904	95

Deponent further says that a very large element in the value of said Western of Alabama Railway stock grows out of the fact that the stock is held by the Central of Georgia Railway, by the Georgia Railroad and Banking Co., and through it controlled by the Atlantic Coast Line and by the Louisville & Nashville Railroad, in consequence of which the volume of business and the earnings of the Western of Alabama Railway are increased beyond what they would otherwise have been; that the fact that said Railroad is used for through business by said systems and their connecting systems, requires that a larger proportion of earnings should be applied and used by it by way of betterments, and the improvements and maintenance of a high physical condition better equipment, better
203 road bed and heavier rails, than if said roads were used for local business only.

(21.) Testimony of CHARLES G. GOODRICH, by affidavit dated Jan. 1906.

That from 1881 to 1893, he was Cashier of the Georgia Railroad & Banking Company, during which period said Bank conducted one of the largest banking businesses in the State of Georgia; that in 1892 the business of the Banking department of the Georgia Railroad and Banking Co., was discontinued, and Deponent became the Cashier of the Georgia Railroad Bank at Augusta, Ga., which position he has occupied up to the present time, besides occupying the position of Cashier of the Georgia Railroad and Banking Company;

The during said period the extent of the business of the Georgia Railroad and Banking Co., and of the Georgia Railroad Bank, the number and variety of their transactions, through him, in which the value of Bonds, Stocks, commercial securities of different kind were involved, Deponent became familiar with the value of stocks and other securities, and the elements which influence the fluctuations in the price of such securities in the State of Georgia; and the market value of all such stocks;

That, in arriving at the market value of any stock, the main elements are the prosperity or want of prosperity of the
204 Country, and the amount of dividends declared; that while Net Earnings may, in some measure, affect the value of a stock, this does not immediately or sensibly increase the market price until the Surplus reaches a sum which is as much as 15% or or 25% of the Capital stock. This is due to the fact that sound business principles would prevent the declaration of all earnings as dividends, in view of the necessity of maintaining a Reserve for business contingencies and especially for replacements, made necessary by the inevitable deterioration of the plant.

That, even if a stock paid dividends, and the past history of the Company's business and earnings showed that it had failed to declare dividends with regularity, such past record, and such failure, would be calculated to depress the market value of said stock until the Company had demonstrated that it would be reasonably certain to continue the payments of dividends in the future; that the market value of stock is also largely affected by the past history of the Com-

pany, and a consideration of whether, during the past, it has regularly and constantly paid dividends, and the amount of such dividends.

Deponent further says that during the years 1895 to 1904, the stock of the Western of Alabama Railway stood in the name
205 of the Georgia Railroad and Banking Co., and of the Central of Georgia Railway Co., and was not bought or sold as other stocks, yet the fair value of said stock during each of the said years can be determined by consideration of its then present and past earnings and dividends, and by a comparison with the value of other stocks during the same period:

That from the year 1890 until 1896, there was a great depreciation in the value of all securities and stocks, particularly so in the value of Railroad stocks; that during said period, many of the railroads in Georgia and in the South were in the hands of Receivers, and stocks of Companies which then earned and paid dividends were far below the present value of the same stocks earnings and paying now the same dividends; that this depreciation in the value of stocks, continued until about 1896, when there began a gradual increase in market values. Deponent attaches hereto (Exhibit "A") a statement showing the values during said years of the stocks of the Georgia Railroad and Banking Company, the Atlanta & West Point Railroad, the Augusta & Savannah Railroad, and the Southwestern Railroad, which are now and were then, among the most valuable stocks in the State of Georgia; that these stocks are largely sought and held for investments by residents of the State:—there being almost daily sales of the same during said years: that the value of the same furnishes a fair standard by which to estimate the value of other stocks, especially
206 of Railroad stocks during said years.

Deponent further says that the market value of stock is little influenced by Net Earnings unless such Net Earnings are paid out as dividends, because the holder of the stock derives no benefit of such Net Earnings; that an exception to this is where a Company, for a long period, earns and declares dividends, and in addition, accumulates a large Surplus, which can be used as Working Capital, or when it attains a large per cent. on the Capital, may be paid out as "extra" dividends. That the Atlanta & West Point Railroad is an instance in point. It not *not* only declared a 6% dividend with unfailing regularity, but earned so large a sum in excess thereof, that it accumulated a great Surplus, which was ultimately declared as an "extra" dividend of 25%; that said Railroad is now paying 6% on Debentures, 6% on Common Stock, and, in addition, earning annually a large sum in excess of all Fixed Charges and Dividends, which Surplus, it is reasonably to be supposed, will, in time, be divided among the stockholders; that, for this reason, said Railroad stock, paying regularly 6% dividends, which is the most valuable of the non-guaranteed Railroad stocks in Georgia, is now selling at 160, and sold from 1895 to 1904 at the price set out in Exhibit A; that, in Deponent's opinion,

during all the period from 1895 to 1904, the Atlanta &
207 West Point stock was fairly and reasonably worth from two to three times as much as the Western of Alabama Railway stock;

That the next most valuable guaranteed, non-taxable Railroad stocks, with which Deponent is familiar, the Augusta and Savannah Railroad and the Southwestern Railroad, which are guaranteed 5% stocks, and by virtue of that guaranty, contained in Lease to the Central of Georgia Railway Co., in 1895, sell above par, and during the years 1895 to 1904, with slight variations sold at prices ranging from 41 to 120, according to statements hereto attached;

That the stock of the Georgia Railroad and Banking Company, which has been leased for 99 years at a rental which guarantees 11% on the stock, has sold from 1895 to 1904 at prices ranging from 150 to 260;

That each of said stocks, during each of said years were worth far more than the stock of the Western of Alabama Railway;

That Deponent attaches hereto a statement of the dividends earned by the Western of Alabama Railway Company during a period of twenty three years, and says that, in his opinion, the fair value of said stock was as follows for each of the years from 1895 to 1904 inclusive:—

208	1895	$25	Per	share.
	1896	25	"	"
1897		40	"	"
1898		45	"	"
1899		25	"	"
1900		25	"	"
1901		60	"	"
1902		70	"	"
1903		80	"	"
1904		90	"	"

Deponent further says that these estimates are on the basis that the stock was not taxable; but, that, if the said stock is taxable, and the stockholder is obliged to pay taxes when no dividends are declared, or to deduct from the dividends the amount of taxes, that the market value of the stock would be greatly depreciated;

Deponent further says that the value of the Western of Alabama Railway stock to the Georgia Railroad is merely nominal, in view of the fact that, by reason of the Lease, said Georgia Railroad and Banking Company is not entitled to collect the dividends or to vote the stock, or to exercise any of the rights of ownership, and has no beneficial interest in said stock except the reversion after the expiration of the 99 years Lease, and that his estimate of the value of the Western of Alabama Railway stock for the years
209 1895-1904 is on the theory that said stock was held by an owner entitled to vote the same, to collect the dividends, and to transfer it.

Deponent further says that one of the elements making the

Western of Alabama Railway stock as valuable at it is grows out of the fact that it is controlled by the Atlantic Coast Line, the Louisville and Nashville Railway, and the Central of Georgia Railway Company, from whom it receives business that would otherwise be diverted to other lines;

Deponent has not actually verified the market quotations set out in Exhibit A, believes that it fairly represents the general value of the stock during the years.

Statement of Dividends of the Western of Alabama Railway Company.

Fiscal year ending—	Amounts.
March 31, 1882	$44,019.53
1883	85,126.67
1884	28,120.
1885	37,500.
1886	22,500.
1887	None
1888	"
June 30, 1889	"
1890	"
1891	"
1892	"
1893	30,000.
1894	30,000.
1895	30,000.
1896	30,000.
1897	45,000.
1898	45,000.
1899	30,000.
1900	30,000.
1901	60,000.
1902	60,000.
1903	60,000.
1904	60,000.
1905	60,000.

210 *Value of Stocks as per Testimony of William E. Bush and C. G. Goodrich.*

Atlanta & West Point Railroad.

Years.	Bid.	Asked.
1893	80	90
1894	85	90
1895	98	100
1896	105	.....
1897	102	.....
1898	112	.....
1899	125	130
1900	125	128
1901	135	.....
1902	150	Sales
1903	160	"
1904	161	"

Augusta & Savannah Railroad.

1893	77	85
1894	80	.....
1895	82	.....
1896	96	.....
1897	94	.....
1898	103	.....
1899	111	113
1900	110	113
1901	115	115½
1902	120	Sales
1903	117½	"
1904	114½	"

Southwestern Railroad.

1893	41	45
1894	70	72
1895	71	73
1896	95	96
1897	93	95
1898	103	.....
1899	112	113
1900	110	113
1901	117	Sales
1902	120	"
1903	121	"
1904	114	"

Georgia Railroad & Banking Company.

1893	150	155
1894	156	160
1895	167	170
1896	.....	177½
1897	172½	.....
1898	196	.....
1899	207	210
1900	220	225
1901	233	.....
1902	237	Sales
1903	260	"
1904	260	"

211 A. W. SMITH, sworn for the plaintiff, testified substantially as follows:—

Direct examination:

I reside in Atlanta. I am an Attorney at Law. I acted as an arbitrator in the arbitration of values between the State and the Central of Georgia in 1905. The Board of Arbitration were, Mr. Warner Hill, approved by the State, myself by the Central of Georgia

Ry. Co., and Mr. Howard of Milledgeville, as umpire. Mr. Wright the Comptroller-General appeared before that Board. He made a statement before that Board with respect to the methods by which the property was assessed for taxation. The testimony of Comptroller-General Wright taken before the Board of Arbitrators for the Central of Georgia R. R. in 1895 was reported by stenographer. I have a copy of that report. I have examined that stenographer's report as to his testimony before the Board in regard to the method of making R. R. assessments. It accords with my recollection. The Comptroller-General stated that he first undertook to equalize the railroads as among themselves. He treated the four large systems as being in the same class. For instance, the Southern, the Central, the Seaboard and the Coast Line. He took into consideration the character of the property of these four systems, as located in Georgia, and undertook to arrive at the value for the purpose of assessment
212 for taxation on a proper basis to equalize them among themselves, and after reaching the result he arbitrarily deducted one-third, in order to equalize them with other property for taxation in the State outside of R. R. property. He said that was the assessment for all railroad companies.

Cross-examination by Mr. WRIGHT:

As to my personal knowledge, as to what the general custom of the Comptroller-General is in reference to accepting the values of property at a fair market value, or two thirds of it. I don't know what you mean by personal knowledge. I have been an arbitrator twice before, and the result of the arbitration was that all assessments have bee- 66⅔ per cent. of the market value. I don't know whether that constitutes personal knowledge or not. Outside of the knowledge that came to me as an arbitrator in these two cases I have not. That knowledge was not based alone on the admissions of the Comptroller-General. It was based on the assessments of other railroads and a comparison of other railroad assessments with the one I had in hand. The whole question was up before the board of arbitration. It was two-thirds in our case and comparing that with the other roads, I thought that was a fair assessment, on the two-thirds basis. The Comptroller-General stated that the railroads were charged two-thirds of their market value. With reference to that being the custom, I think my knowledge was more than what he stated; I
213 think it was what he said and did, the actual figures that he made before us, and the result that he arrived at, that was all before us. It was from what he said and did and what was before us altogether: The only knowledge of a general custom that I have is that which was acquired in my official capacity as one of the arbitrators. I was an arbitrator for the railroad; I was appointed by the railroad as its arbitrator and I was a Judge. I was General Counsel for the Atlanta, Knoxville & Northern, but it never had any connection with the Central of Georgia Railway. There was no connection with the Central of Georgia Railway and the Atlanta, Knoxville & Northern. In 1905, I was not General Counsel for the Atlanta, Knoxville & Northern, because it then had no seperate, corporate

existence, but I represented it in some unfinished cases. Its seperate corporate existence at that time had ceased. I have never been employed by the Central of Georgia in any case.

This is a part of the testimony of the Comptroller-General in answer to certain questions asked by the Board. There is no difference to the railroads of the State, how you divide it? No there is no difference. Q. You endeavored to equalize it on the basis of taxation, and in doing so you substantially took off one-third? A. Practically one-third, which was an arbitrary act entirely, and with a view of meeting all possible complaints that there was an excess."

214 (By Mr. HILL:) That was taken off of all of them?

A. Off of all of them. That is correct. I do not recall that the Comptroller-General took any such position as that while there before that Board, distinctly stated how he arrived at his result on a 6% capitalization plan, and if, in order to not have that result be in excess of the market value, he did not reduce the same, sometimes less than one-third; and sometimes even more than one third. I don't think he adopted the 6% net earnings basis as to the Central of Georgia Railway Company. As I recall, I think he adopted one or two methods; I think he had the net earnings basis, and it was discovered that on the outstanding securities basis—he had $15,000,000.00 worth of securities counted twice. This discrepancy was discovered and discussed by Colonel Lawton, and he explained how he had the $15,000,000 securities in there twice. As a matter of fact the 6% basis was not used in that case exclusively. The one-third reduction was applied to all of the railroads; they always took 33⅓% off after equalization. The Board of arbitration applied that in pursuance of the Comptroller-General's statement that that was the rule. I would say that this $15,000,000.00 discrepancy was an unintentional oversight on the part of the Comptroller-General. When I say that the rule was universal, what I mean by that is, that no matter what the method of arriving at the valuation was,

215 after he arrived at it, he deducted one-third, I say that unquestionably. He said it before the Board. He said it here in the stenographic report.

By Mr. HILL:

Q. That was taken off of all of them?

A. Off of all of them. He did not adopt the 6% basis for the Central of Georgia railroad. The 6% basis of capitalization was only one method of arriving at valuation. I don't know all that he said. He had the figures before us. He used different methods. One was the outstanding security of the Company, he used that as a basis for arriving at valuation. Then he used the 6% basis. Then he said at arriving at the Central R. R. valuation, he took into consideration the Coast Line, the Seaboard Airline and the Southern System, but in order to figure against the State, he took the Coast Line because that had the highest earning capacity of any road in the State, but he did not use the 6% basis exclusively as a criterion for the Central of Georgia Railway. The result of the different methods worked dif-

ferently. The Comptroller—did not state in so many words to that Court that where there was a controversy between him and the R. R. that his reason for making a reduction after he had arrived at a certain figure was to be sure that the taxes would not be in excess of the fair market value relative to other property. I never understood that he did. He did not state before the Board that the Attorney-General said that no other system could be adopted.

216 The Attorney General did not state that before the Board. In 1903 I have a recollection that the Attorney General did appear before the Board, but we were not assessing physical properties, we were assessing franchises. My recollection is, that the Attorney General said there was no provision of law for deducting 33%. That was the first time franchises were ever assessed and we didn't have any criterion to go by at all. I understood as a legal proposition that the taxation of property had to be equal. There were various methods that were used for the purpose of arriving at the valuation of the property, and when these results were obtained, 33-13% was taken off of that in order to reach its taxable value. That was the plan adopted by every method of calculation. No one method was used exclusively in arriving at the calculation, on the contrary every known method was used, I think about ten or a dozen.

T. A. Hammond, sworn for the plaintiff, testified substantially:

I am an Attorney at Law. Last year I was on the Board of Arbitration to assess the value of the Seaboard Air Line Railway for taxation. Mr. Warner Hill, appointed by the State, I by the Seaboard Air Line and Judge Robert T. Daniel of Griffin as Umpire, composed the Board. The Board made a reduction from the fair market value of the railroad property in finding the figures which were returned for its taxable value. The Comptroller-

217 General came before our Board. I think I know the custom in the Comptroller-General's office as to assessing or accepting assessments of railroad properties for taxation in this State. I base my opinion in the first place on the fact that I have returned taxes myself to the State for years, and the Tax-Receiver and I agreed always that he should accept the property at two thirds of its value, and he so accepted it. That is my own personal observation as to the assessment of property for taxation. My opinion is also based on what was brought out before the Arbitrators and the statement of the Comptroller-General. I do not wish to misrepresent or exaggerate what the Comptroller said or did. I have a stenographic report of his actual words. We were undertaking to find out the actual value of the property, and he stated that he reduced that actual value some times one-third and sometimes a little more or a little less, to equalize it with other properties of the same kind. This is a correct transcription of his evidence at that time, and it accords with my recollection.

The Comptroller-General was asked this question by Judge Daniel (I give the exact words of each) "Q. The plan adopted by you

in making this assessment was taking the net income and capitalizing it at six per cent? A. Yes sir. Q. The plan you adopted as the fairest and most equitable way of reaching the value of railroad property? A. Yes sir; that is my view, and I am sure, as I say,
218 they are taxed in excess of what seems to be the average assessment of other property. I generally practically reduce one-third; sometimes it is not quite so much, and sometimes it is a little more."

The Board got at the valuation of the Seaboard Airline first by capitalizing the net income at six per cent., and then reducing one-third, as we found that was the custom. In fairness to myself and the Comptroller, I say that the first time General Wright appeared before the Arbitrators his evidence was not taken down, and that specific question was asked him by Mr. Daniel; and I base my opinion not only on that testimony but on what he said when he first appeared before the Board.

Cross-examination:

In the stenographic report referred to be me the following also appears: By Mr. Daniel: Q. The plan you adopted in making this assessment was taking the net income and capitalizing it at six per cent.? A. Yes sir; that is what the Comptroller-General said. It is true that General Wright stated that in addition to that it sometimes appeared to him that possibly the six per cent. plan would not be entirely satisfactory to the railroad representative or him-self, in which event he would arbitrarily reduce it in order to make it equal, if it was not beyond the market price he would reduce it sometimes one-third, sometimes not so much and sometimes a little more. I do not understand General Wright as
219 stating that his purpose in making these reductions was so that the assessment would not exceed a fair value of the property. I did not understand the Comptroller-General's language or statement was to the effect that after he had arrived at a result by his method of capitalizing at six per cent. that if he thought that was in excess of the market value he arbitrarily reduced it by one-third, or a little more or a little less. The idea I gathered from his testimony was that it was his purpose to find out the value of the whole railroad property, tangible and intangible and then capitalize the whole on a six per cent. basis. (We found this account to be $22,000 per mile.) He did not assess at that. He said that he arbitrarily reduced the assessment below that in order to assess it on a fair basis, if the other railroads and other property in the State, and that it should not exceed its fair market value. The Comptroller-General also testified before the Board of arbitrators as follows:—"A. Which gave me the net earnings of the combined lines and which shows net earnings $3,783,369.00. I capitalized this at six per cent., which gives me a valuation of $63,000,000.00; the capitalization based on six per cent., is $22,492.00, a mile, and I made the assessment per mile $15,347.00. My Mr. Daniel: Q. How did you get the difference between $22,000 and $15,000? A. Arbitrarily. Q. Reduced it? A. Yes; in other

words to do the road absolute justice and not to tax them more
220 than their actual market value, or what appears to be their market value, everything else considered, I just simply made the reduction, and put it at $15,347.

Plaintiff introduced in evidence letter from William A. Wright, Comptroller-General to Forrest Adair, Vice-President Atlanta Water & Electric Power Company, dated July 25th, 1905, the material portions of which are as follows:—

I have examined the report showing the capitalization of your Company, gross income for three months and operating expenses for the same period. It would appear that your gross income for three months was $26,000.00, operating expenses, $11,000.00, leaving $15,000.00, as the net income for three months. This would give a net income for 12 months of $60,000 which capitalized at 6% would show the property to be worth in round figures a million dollars. Allowing a reduction of one-third on this valuation, which it is claimed is the percentage at which other property in this State is taxed, would leave a valuation of the property taxable of $666,667.00.

Your return of the tangible property appears to be $242,050.06, which deducted from the above figures, would leave $424,617.00. It will therefore be seen that there is $424,617.00 of valuation of either tangible or intangible property which would escape taxation on a basis of your return.

221 You have made no return of franchise, claiming that you have no franchise which is of value, I cannot concede that this is true from a legal standpoint. The franchise Tax Act imposes a tax upon certain corporations, among the number, water and electric companies, and provides further that where the franchise of such corporations is not returned that the Comptroller-General in assessing the property shall double tax it.

I therefore, suggest that you make a return of the franchise at some nominal value, if you desire to do so, so as to save the Company the double tax penalty. I will then, if necessary make an assessment upon the franchise, and of course, will have to use the data which I have given you above as a basis upon which to return the value of said item of said property. The tangible property being returned at $242,050.00, if this valuation is insisted upon as correct, as stated above, there would remain the valuation of $424,617.00, that would go untaxed, or would have to be taxed under the head of franchise.

222 Plaintiff introduced in evidence from William A. Wright, Comptroller-General to Forrest Adair, Vice-President Atlanta Water & Electric Power Company, dated August 14th, 1905, the material portions of which are as follows:—

I am in receipt of yours of the 8th inst., enclosing affidavit of gross income and operating expenses of your property for the months of April, May and June, from which it appears that the

operating expenses have exceeded the gross income, whereas for the three previous months the net income was $15,000.

The abnormally large operating account for the last three months must necessarily be due to additions or betterments to the property, and this being true, it would not be a basis upon which to equitably assess the franchise of your Company.

It appears from the sworn financial report, filed under date of the 30th of June, that you are paying 5% interest on $1,350,000 of bonds. It also appears from the same report that the net earnings capitalized at 6% would make the property worth $1,000,000 in round figures. Making a reduction of one-third to bring the property to the basis at which it is claimed other property in the State is assessed, would make the value of this property $666,667. You have returned the tangible property at $242,050. This amount deducted from the above ascertained value would leave the
223 intangible value attaching to this property $424,617.

I note from the typewritten endorsement attached to this return that the Company protests that its franchise has no value but in order to comply nominally with the law it is entered at $100. My contention is, that this property is worth for taxation, based upon its bonded indebtedness $1,350,000, and based upon its net income capitalized at 6% it is worth $666,667. At the valuation at which you have returned the tangible property the tangible value of the property would therefore be $424,617.

224 FORREST ADAIR, sworn for the plaintiff:

I am Vice-President of the Atlanta Water & Power Company, and the one that had the conversation with the Comptroller-General about the subject matter of the returns of the Company for taxation. I recall the two letters signed William A. Wright, Comptroller-General and dated Aug. 14, 1905 and July 23, 1905. In the letter of Aug. 14, 1905, appears the following language of the Comptroller: "The abnormally large operating account for the last two months must necessarily be due to additions or betterments to the property, and this being true it would not be a basis upon which to equitable assess the franchise of your company." The Comptroller refused to use the returns of income for the three months. He declined to consider that on the idea expressed in this paragraph, and as expressed to me personally, that it must necessarily be used for betterments, and not in the nature of regular operating expenses. I was present at the arbitration that was had in regard to the Company's property. At that time Mr. Wright, Comptroller-General appeared before the board of arbitrators; and in explaining how he arrived at the assessment that he had put on the company he gave the same figures that are given in these two letters, as to how he capitalized the net income, and then stated further that he took off ⅓ as stated in that letter, to bring it upon the annual basis upon which property is taxed in the State.

225 The following evidence was submitted by the defendants:

The substantial portions of the following letters, to-wit: William A. Wright, Comptroller-General to John M. Egan, President, dated May 25th, 1901: I have just learned that your road claims one-half interest in the Western Railway of Alabama, represented by 15,000 shares of stock, par value $1,500,000. Upon examination of the returns of your road in Georgia I do not find this property embraced in them. I presume that the omission of this item from said returns is through some oversight or misconception of the law with reference to the taxation of this property in Georgia. I beg to suggest that this property is taxable in this State and should have been embraced in the return made by the Central of Georgia Railway Company for taxation for the present year. If I am correctly informed as to the facts stated above or the return of this property has not been made because of some misunderstanding as to the requirements of the law of this State, I will be glad if you will make a supplementary return of this property in order that it may bear its proportions of the taxes assessed against it under the laws of this State."

Letter from J. F. Hanson to William A. Wright, Comptroller-General, dated May 30, 1901: Yours of the 25th, addressed to John M. Egan, Esquire, President of the Central of Georgia Railway Company, Savannah, Ga., has been referred to me for reply.

226 I beg to say that I have turned the matter over to our General Counsel, Messrs. Lawton & Cunningham, for advice and will communicate with you further as soon as we hear from them.

Letter from William A. Wright, to Major J. F. Hanson, dated June 3, 1901: I beg to acknowledge the receipt of yours of the 30th, in reply to my letter addressed to Mr. John M. Egan, President of the Central of Georgia R. R. concerning the failure of Mr. Egan to include in his tax return certain stock owned by the Central of Georgia in the Western Railway of Alabama. I note what you say in regard to the matter, and will await your advice in regard to same."

Letter of J. F. Hanson to William A. Wright, dated June 7, 1901: "Referring to your letter of May 25th, to John M. Egan, President, with reference to the return of fifteen thousand shares of stock in the Western Railway of Alabama by the Central of Georgia Railway Company for taxation by the State of Georgia.

I beg to enclose herewith copy of letter of our general counsel, Messrs. Lawton & Cunningham, under date of June 6th, by which you will note that in their opinion the Central Railway is not the owner of said stock and cannot be assessed for taxation on the same.

Col. Lawton is in Atlanta at this time, and I write him tonight to please call and see you tomorrow for a conference with reference to this matter. We have no disposition to get into a controversy with the State and hope we will be able to reach a satisfactory

227 adjustment of this case.

Letter from William A. Wright, Comptroller-General, to Major J. F. Hanson, dated June 10, 1901.

"I am in receipt of yours of the 7th enclosing letter addressed to you by the general counsel of the Central of Georgia Railway Company, concerning the taxation of 15,000 shares of stock of the West-

ern Railway of Alabama, held by your Company. The letter was referred to the Attorney-General, and he advised that, under the statement of facts made by your counsel, the stock referred to in their letter is subject to taxation in the State of Georgia, and also advises that unless taxes are paid upon this stock by your corporation, it is my duty under the law, to assess same and issue execution for taxes due the State on said stocks. Please, if necessary, confer with your attorneys further about the matter, and advise me."

Letter from Messrs. Lawton & Cunningham, General Counsel, to Major J. F. Hanson, June 6, 1901:

We return herewith letter of Mr. John M. Egan, President, under date of May 26th, and letter of Hon. W. A. Wright, Comptroller-General, to Mr. Egan, dated May 25, 1901.

On the 2nd of May, 1887, the Central Railroad & Banking Company of Georgia, made a deed to the Central Trust Company of New York, whereby it conveyed the 15,000 shares of stock of the Western Railway of Alabama then held by it to said Trust Company, to secure an issue of $5,000,000 of bonds with the interest thereon.

228 In our opinion, the Trust Company became vested under this deed with the legal title to the 15,000 shares of the capital stock of the Western Railway of Alabama and now holds the same under title. The interest of the Central of Georgia Railway Company is only a collateral interest which may arise on the payment of the bonds for which said stock was transferred to the Central Trust Company. This Company is entitled to vote said stock, and it does so by virtue of the proxy issued in its name by the Central Trust Company, the stock standing on the books of the Railway Company in the name of the Central Trust Company of New York. The income arising from said stock is paid over to the Central of Georgia Railway Company, and is a part of the gross income of this Company upon which taxes are paid to the State of Georgia. Under these facts, we are of the opinion that the Central of Georgia Railway Company is not the owner of said stock, and cannot be assessed for taxes on the same."

Letter from J. F. Hanson, to William A. Wright, Comptroller-General, dated June 11, 1901:

I have yours of the 10th and note that the Attorney-General decides that our stock in the Western Railway of Alabama is subject to taxation in Georgia. I will refer same to our General Counsel, Messrs. Lawton & Cunningham, for such opinions in the case as they may render, and will communicate with you promptly on receiving their reply.

229 "I beg to say that the Central Railway does not desire to have any controversy with the State authorities, and I beg that you will not consider legal steps in connection with this matter, as we have every disposition to settle in a manner that will be satisfactory to you as the State's representative."

Letter from William A. Wright, Comptroller-General to Major J. F. Hanson, dated June 12, 1901:

I am in receipt of yours of the 11th acknowledging my letter of the 10th advising you of the opinion of the Attorney-General with

reference to the taxation of the stock of the Western Railway of Alabama owned by the Central of Georgia.

I observe that you state that my letter has been referred to the General Counsel, Messrs. Lawton & Cunningham, and that you will communicate with me promptly upon their reply. I beg to thank you for your prompt attention to this matter, and to add that I would much prefer that we have no controversy over the taxation of this property, nor do I believe that it will be necessary to resort to legal steps to adjust the question. I would very much prefer an adjustment between ourselves."

Letter from J. M. Terrell, Attorney-General, to Messrs. Lawton & Cunningham, General Counsel, dated June 14, 1901:

230 "I beg to acknowledge receipt of yours of the 12th inst., and in reply will say that I did not give the Comptroller General any written opinion upon the question as to whether or not the shares of stock of the Western Railway of Alabama held by the Central of Georgia Railway Company, are taxable. Some days since the Comptroller-General asked me if a railroad company chartered in this State, owning shares of stock of a railroad company in another State, and had deposited the same out of the State as collateral security for a loan, should be required to return the same for taxation. I told him that such shares of stock were unquestionably taxable under the General Tax Act as construed by the Supreme Court in the various cases that were before that Court last year from the Atlanta Circuit.

"Your letter stated substantially the same facts as those given to me by the Comptroller-General. The Central of Georgia Railway company under the facts as stated by you certainly had a property right in the shares of stock. This statement presents an additional question to that presented by Col. Wright, and I will investigate the same.

"I will be glad to have your views at length upon the question, and unless there is considerable doubt of course I would prefer the Comptroller-General not to subject your road to the trouble of a lawsuit. However, if after hearing from you, and after a further investigation of the question I have doubts upon the question, I shall advise the Comptroller-General to have the question settled by the Courts."

231 Letter from J. M. Terrell, Attorney-General, to Messrs. Lawton & Cunningham, dated June 26, 1901:

"I beg to acknowledge receipt of yours of the 24th inst., and wish to thank you for same. I shall consider the statement of facts as therein set forth and the authorities cited before finally advising the Comptroller-General. I note that you fail to refer to section 778 of vol. 1 of the Code. This section was codified by the Commissioners from several decisions of our Supreme Court, and it seems to me to somewhat extend the rule laid down in the sections which you cite."

Letter from J. M. Terrell to Messrs. Lawton & Cunningham, dated June 27, 1901:

"Yesterday afternoon I sent you a letter to Col. W. A. Wright

and I notice in this morning's Constitution a reference to it and the Central Railroad taxes, which very much surprised me. I suppose that the reporter of the Constitution was in the Comptroller-General's office while he was reading the letter, and in that way the matter reached the newspapers. I cannot otherwise account for its publication."

Letter from J. M. Terrell to Lawton & Cunningham, dated Aug. 16th, 1901:

232 "Yours of the 14th inst., received, and in reply will say that several weeks since I had a conversation with your Mr. Cunningham, but we did not reach a definite agreement as to the tax matter referred to by you. We both expressed ourselves as anxious to avoid if possible, even 'friendly' litigation, and he left me under the impression that he would confer with his client further on that line and let me hear from him again.

I think it very probable that the Georgia Railroad will contest its liability, and inasmuch as a case against that Company will not present any question except one of the liability of the owner for taxes on the shares of stock of a non-resident corporation the Comptroller-General might be willing to let your case go over until that one is determined. The Comptroller-General is out of the city this week, hence I am not able to ascertain his wishes."

Letter from William Wright to Lawton & Cunningham, dated Oct. 22, 1902:

In your review of your opinion of the Attorney General relating to the taxability of certain bonds owned by the Central of Georgia Railway Company, hypothecated in New York, you conceded that these securities were subject to taxation as the property of the Central of Georgia Railway Company. The same contention has been had in regard to the taxability of the shares of stock of the Western Railway of Alabama, owned by the Central of Georgia Railway and

233 also hypothecated in New York.

"Having conceded the correctness of the opinion of the Attorney-General, in regard to the bonds referred to above, I assume that you will not insist upon your original contention in regard to the stock of the Western Railway of Alabama held by the Central of Georgia. I, therefore, ask that you instruct the proper officers of your Company to make immediate settlement of the taxes due upon this stock for all of the years for which it is in default; otherwise, upon the advice of the Attorney-General, I shall proceed to the collection of the taxes on this stock as the law directs."

Letter from Lawton & Cunningham to William A. Wright, dated October 24th, 1902:

We have your esteemed favor of the 22nd. inst., calling on the Central of Georgia Railway Company to pay taxes upon the capital stock of the Western Railway of Alabama.

We note your statement that we have conceded the bonds owned by the Central of Georgia Railway Company hypothecated in New York, subject to taxation. We beg to correct this statement, and to remove such an impression from your mind. We have not conceded this, but inform you that, in view of the doubtful legal question in-

volved, which doubt has originated in our minds after reading the Attorney-General's very able opinion on the subject, we had concluded not to contest the same, and were willing to pay taxes
234 upon the property, and therefore, Major Hanson and the writer came to see you for the purpose of fixing on the values at which the property should be returned. We do not concede that the property is taxable, but rather than depart from the policy which the Central of Georgia Railroad has so long pursued of not resisting taxation as assessed against it, except in extreme cases where it was strongly of the opinion that the tax was illegal, we would pay this tax rather than have any litigation over it.

Disagreeing with you in the premise on which your letter is based, we necessarily cannot assent to the proposal which you reach as a conclusion, that is to say that the Central should at once pay tax upon its holdings of stock in the Western Railway of Alabama. There is, however an additional reason why we cannot do this, and that is that the Courts have just decided in the Georgia Railroad case, as we are informed that the stock is not taxable.

We had understood that the question of taxes on the Western Railroad of Alabama stock held by the trust company in New York under the Central Railway collateral trust mortgage would await the decision of the litigated case with the Georgia Railroad: We should still prefer to have this course pursued, but if you are unwilling to do so we shall be regretfully compelled to stand upon our rights as interpreted by the United States Court."

235 Letter from Lawton & Cunningham to William A. Wright, dated November 4th, 1902:

"Pardon the delay in answering your esteemed favor of the 28th, inst., which has been due to the absence from the city of that member of our firm having this matter in particular charge. While we regret very much to have to do so, we can but comply with your courteous request that we should designate real estate in the City of Atlanta on which to make a levy. We presume you do not mind its being outside of the city of Atlanta so long as it is in the County of Fulton. This Company owns a considerable amount of real estate in Atlanta generally known as Atlanta Belt Line lands, described as follows: All of land lots Nos. 154 and 203, except two acres off the east side sold to Todd, and parts of land lots Nos. 155, 156, 183, 179, 144, 145, 204, 184, 175, 167, and 168 of the 14th District of Fulton County, and parts of land lots Nos. 225 and 190 of the 17th District of Fulton County, and the whole containing about 1700 acres of land. We should think that for this purpose land lot No. 154, of which we own the entire tract, would be sufficient; if not, any of the remainder of the land above described would be suitable for levy. We do not go into further details because it is of course not anticipated that we shall allow the property to go to sale.

Mature, by the Ocean Steamship Company of Savannah, which has contracted to purchase the ships."

236 Affidavit of William A. Wright, dated April 20, 1905:

"I am one of the defendants in the above stated case and at present the Comptroller-General of the State of Georgia, having

been such since 1879. Complainant in the above stated case is the owner of fifteen thousand shares of stock in the Western Railway of Alabama, a foreign corporation. Deponent learned of this fact on or abo-t May 25, 1901, and observing that said shares of stock had not been returned for taxation by the complainant, wrote to John M. Egan, President of said Company, on or about that date, calling his attention to the omission to include this property, in his return and demanded that he should make a supplemental return embracing this property. A copy of this letter is hereto attached, marked "Exhibit "A," and leave of reference is prayed thereto and as a part of this affidavit. Complainant neglected, failed and refused to make any return for said shares of stock for taxation and deponent, as was his duty under the law, assessed the same from the best information obtainable and issued the execution therefor and had the same levied, when the same was arrested by the injunction issuing from the Superior Court of Fulton County."

Affidavit of J. M. Terrell, then Attorney-General, dated April 20, 1905:

"I was on the 25th day of May, 1901, Attorney-General of the State of Georgia, which office I had held from November 1, 1892. That on or about said 25th, day of May, 1901, I learned for the first time that complainant in the above stated cause was the
237 owner of fifteen thousand shares of stock in the Western Railway of Alabama, that this knowledge was acquired in this way: Hon. Wm. A. Wright, Comptroller-General of the State of Georgia, stated that he had just learned that the complainant owned said stock and submitted the question to me as Attorney-General whether said stock was subject to taxation, and after investigating the same I gave it as my opinion that such stock was subject to ad valorem taxation as other property in this State."

Portion of affidavit of Wm. A. Wright showing method of arrival by him of valuation:

"I ascertained the amount of gross earnings of the Western Railway of Alabama for each year in which the said shares of stock of the Western Railway of Alabama were in default for taxes. I also ascertained the operating expenses of the said road for the same period and deducted the operating expenses from the gross income, except when the operating expenses appeared to include betterments; I then deducted 66⅔ per cent. of the income as operating expenses; and from that sum deducted the annual interest, charged on the said Western Railway of Alabama, and capitalized the balance at six per cent., thus reaching what I deemed the market value of the shares of stock of the said Western Railway of Alabama and made my assessment for each year upon this basis of value thus arrived at. Copy of the calculation and assessment is hereto attached,
238 marked "Exhibit X." On this basis of value the shareholders of the Western Railway of Alabama would receive six per cent., net upon their shares of stock.

"Deponent believes the amount thus reached is at least a low market value of the shares of stock."

Affidavit of Charles S. Bohler, dated April 24, 1905:

"That I have made an effort to collect all taxes that appear upon the digest, and have placed thereon all parties in default who have failed or refused to return taxes, to the best of my knowledge. I am now endeavoring to ascertain, and shall place upon the digest of this year and former years, the owners of all foreign stock, bonds and debentures that I am informed of or can ascertain, and shall continue to place upon the digest and endeavor to collect taxes upon all such that I can get evidence of being owned by residents of Richmond County."

Affidavit of A. P. Stewart, Tax-Collector of Fulton County, dated April 26, 1905:

"I have made an effort to collect all taxes that appear upon the digest, and have placed thereon all parties in default who have failed or refused to return taxes, to the best of my knowledge. I am now endeavoring to ascertain and shall place upon the digest for this year and former years, the owners of all foreign stocks, bonds and debentures that I am informed of or can ascertain, and shall continue to place upon the digest and endeavor to collect
239 taxes upon all such that I can get evidence of being owned by the residents of Fulton County."

Affidavits of W. J. Steed, Tax-Receiver of Richmond County, dated April 24, 1905:

"I have carried out the instructions of the Comptroller-General and propounded the questions therein stated to each tax-payer, including question number eighteen, towit, 'What is the fair market value of all the stocks and bonds owned by you including debentures, municipal and corporation bonds, in home or foreign corporations, whether held in your own hands or on deposit within or without this State? I have propounded this question for years past, and have endeavored, as far as I am able, to ascertain the owners of foreign stock. I am now seeking to ascertain the holders of stocks, bonds, and debentures in foreign corporations, and will place them upon the digest when discovered, and for as many years back as I may ascertain."

240 Affidavit of T. M. Armstead, Tax Receiver of Fulton County, dated April 26, 1905.

That for — years he has been Tax-Receiver of Fulton County. He has sought to induce the return of all property covered by questions furnished by the Comptroller-General. Deponent has never relieved nor intended to relieve from returning taxes, the holders of foreign stock, but has sought to induce all tax-payers to return all property subject to taxes.

The order issued by W. T. Newman, U. S. Judge, December 22nd, 1902, in the case of Central Trust Company *vs.* W. A. Wright, Comptroller-General, and Central of Georgia Railway Company, restraining W. A. Wright, Comptroller-General from levying tax execution involved in the case, was read in evidence, by which it was provided:

"It is ordered that the defendants be restrained as follows: The Central of Georgia Railway Company, from paying said taxes or in any wise altering the status thereof, and the other defendants from

taking any further steps to enforce said taxes or the executions issued for the same."

This order was dissolved and the bill dismissed without hearing and without prejudice by the plaintiff in the United States
241 Court on February 10th, 1905, and on the same day the bill in this case was filed and the temporary restraining order granted.

PAUL D. LANGFORD, testified by affidavit for the defendants substantially as follows:—

That he is a dealer in stocks and bonds and familiar with the financial statements and values of railroad stocks and securities in this vicinity, and especially of those of the Western Railway of Alabama. Said shares are not sold in the market, being owned one-half by the Georgia Railroad & Banking Company, and one-half by the Central of Georgia Railroad Company, and hence their value is ascertainable only by an analysis of the financial statements of the Company, and the physical condition of the railroad property, and its strategic position. The Western Ry. of Alabama is now a part of a through system from the North to New Orleans. Deponent has examined the financial statements of the gross and net earnings, operating expenses, etc., of said Company from the year 1895 to 1905, both inclusive. After a careful analysis of the financial statements of each of the said years, I would say that the following would be a most conservative estimate of the value of the stock, to-wit; 1895, $60.00 per share; 1896, $60.00 per share; 1897, $80.00; 1898, $75.00; 1899 and 1900, $90.00 each; 1900 and 1901, $100; 1902, 1903, 1904, and 1905, $110.00.

242 For ten years past, average net earnings have been a trifle over 80%, which upon 6% *per cent.* valuation would have made the stock on an average, for the above years, $133.00 per share. But I have allowed 3% for betterments and depreciation, which I deem a liberal sum, making a *clear* net average of 5% on which my figures above are based.

WILLIAM A. WRIGHT, also testified for the defendants by affidavit substantially as follows:—

I was elected Comptroller-General of the State of Georgia in 1897 and have held the office continuously for twenty six years. As such officer, I am the head of the taxing department of the State and it is my duty each year to issue instructions to the tax receivers of this State for their guidance in receiving the returns of all property in this State subject to taxation, and which under the law is returnable to these officers. The digests of the taxing officers of the several counties of this State, are finally returned to this office and here deposited. These digests contain property returned for taxation in the several counties of the State, while there is a class of property, and among the class railroad property, which is required to be primarily returned to this office—the office of the Comptroller-General—for taxation. In this way, and

on account of my long occupancy of the office of Comptroller-General, I have become familiar with the property values of this State.

243 The instructions which I yearly send out, and above referred to, contain a summary of the laws relative to taxation and the duty of the receivers, and the purpose of these instructions is to put in succinct form, the Law for the benefit of the receivers either quoting law, or by reference to the sections of the Code. Attention has invariably been called to the tax-receiver as to the oath which the tax payer is to take, and the further fact is stressed that it is the duty of the tax-receiver to have the tax payer take the oath as provided in Section 834 of the Code, which oath is as follows:

I do solemnly swear that I have carefully read (or have heard read) and have duly considered the questions propounded in the foregoing tax list, and that the value placed by me on the property returned, as shown by said list, is at the true market value thereof; and I further swear that I returned, for the purpose of being taxed thereon, every specie of property that I own in my own right, or have control of, either as agent, executor, administrator, or otherwise; and that in making said returns, for the purpose of being taxed thereon, I have not attempted, either by transferring my property to another by or by any other means, sought to evade the laws governing taxation in this State. I do further swear that in making said returns I have done so by estimating the true worth and value of every species of property contained therein."

244 I have invariably stressed and emphasized the fact that it is the duty of the tax-receivers to see that all property returned to them was returned at its true and full market value and wherever the law made it my duty as Comptroller-General to receive the return of property I have adopted the rule of law on the subject of requiring that it be returned at its true market value. This is the law of the State as I understand it, and the practice so far as I know and am advised. The claim is often made by the tax payer that there are other tax-payers who do not return their property at its true market value, and that they should not be required to return theirs at its true market value, but this claim has its foundation in sporadic abuses of the law and not by virtue of the law, nor by its partial administration. If the practice exists in any of the jurisdictions of this State wherein property is confessedly returned at two-thirds of its value it is not in consequence of the law, nor of any instructions which I have given, but in spite of both.

In assessing the stock of the Western Railway of Alabama, held by the Georgia Railroad & Banking Company, I have done so prompted by the same rule of law which has directed and controlled me in the assessment of all railroad property. The assessment of value for the several years made on this stock was made from the best information I could procure as to its value, and was made

245 by me for the reason that the railroad companies neglected and refused to return the property for taxation. These assess-

ments were made in pursuance of official duty and there was no purpose to place an excess of valuation on these shares of stock, nor do I believe that the valuations I have placed thereon are in excess of their true market value.

To compare the valuation and assessment of foreign railroad stocks held here with the valuation of the physical properties of railroads located in this State, is misleading. It would necessarily result in an erroneous conclusion and can furnish no basis for determining whether the stocks in question are fairly or unfairly assessed.

The taxing officers in the nature of things, cannot have the physical properties of foreign railroads under observations while in this State the contrary is true. Then this particular stock occupies a peculiar situation even as compared with other stock; It is owned entirely by two owners—two partners you may say,—in operating the W. of Ala.

The stock is not dealt with on the market, and its value cannot be ascertained by the buying and selling price.

Again, dividends cannot be entirely relied on as a test of value. Otherwise, in those years when there is no dividend the stock ought to be returned as having no value, which would be as erroneous as returning a railroad which is not earning net profits as of no value for taxation.

246 Again the two partners operating this road might if they choose, use the profits in any way they please, declaring no dividends as such; they might use the profits in building extensions or in permanent improvements.

To make a comparison that would be of value, you would have to inquire if these shares were treated differently from other foreign shares,—I will say on this point that I adopted the only method I could devise for reaching what these shares were worth—a method which a proposed purchaser would adopt if he were making inquiry as to their value. I further checked the result of this method by what I learned the owners paid for the property 25 or 30 years ago when it was by no means so valuable, viz., three millions of dollars and more.

I tried to be cautious and conservative, and asked the railroad companies to give me any information they had, and they did give it, and I considered it all, and finally reached the conclusion I did with the best information as to this particular property that I could procure."

247 The following opinion of Honorable John C. Hart, Attorney-General, bearing date August 25th, 1904, was introduced in evidence by the defendant, the material portions of which are as follows:

I am in receipt of your inquiry of even date in which you request an official ruling whether arbitrators selected to settle the question of value of property to be returned for taxation have the right to fix the value confessedly at fifty per cent. of its market value, bases upon the contention that other individual or corporate tax payers have in certain instances returned their property at half of its

value. This inquiry, as I understand, has been provoked on account of certain differences arising between a cotton mill or mills in the City of Augusta and the tax receiver of Richmond County.

On a former occasion this identical question was raised by the railroad companies doing business in this State, their contention being that they should be assessed only 50 per cent. for the reason that individual tax payers paid taxes on their property at that rate. My official opinion then was, that it is now, that arbitrators have no right to fix the value at any such figure, but that the law prescribes the rule by which property should be returned for taxation, viz., "At it fair market value." All property in this State, both corporate and individual should be returned, and if not returned, assessed
248 in the light of this rule. I do not understand how there can be any question about the proposition. The section of the Code in plain language requires that the tax-payer shall return his property as its fair market value, and it surpasses my comprehension how any tax payer can confessedly return his property at half of its value, and insist that he can conscientiously take the oath that it is its fair value, or its true market value.

It must be confessed that there is property, corporate and individual returned for taxation in Georgia, at its true market value, some of it at half of its market value, and there is doubtless a large per cent. not returned at all, and a taxpayer could insist with as much propriety, since there is some property not returned in Georgia at all, that he should not be taxed, as to insist, because there is some other property returned at half of its value, his must be returned at the same rate. The remedy is, in order to equalize taxation, to force the man up who is not bearing his part of the burdens of government, and not drag the citizen down to his level who is willing to bear his, or at least is unwilling to shirk it by making a false return.

The correct rule, therefore, is, that all property should be returned at its fair market value, because, first, the law requires this,
249 and secondly, in its enforcement the expenses of government and maintenance of law so essential to the preservation of property, is equally and justly distributed."

WILLIAM A. WRIGHT, sworn for the defendants:

I am Comptroller-General of the State. The law requires that all railroad properties be returned to the Comptroller-General under oath with the items itemized; the return shall state the value of the property under oath. The returns are sworn to by the officers in control of the property, and forwarded to the Comptroller each year by the first of May. The Comptroller is required upon receipt of the returns to examine them and if he finds any item of property embraced in the return put at a valuation lower than he considers its market value he is required to assess the different items of property to which he urges objection on account of their low valuation. When I make my assessment on any item of property to which I raise objection, I am required to do it from the best information I can obtain. The law

does not fix any basis except its market value. When I make an assessment in such cases, the railroad is allowed twnety days upon notice of my assessment to determine whether it will arbitrate and submit my assessment to a board of arbitrators. The law
250 requires that the Comptroller shall appoint on- of the railroad commissioners as arbitrator on the part of the State, the railroad is allowed to appoint an arbitrator on its behalf. If these two are unable to agree upon a valuation, they are required within thirty days to select an Umpire. If they fail to select an Umpire within thirty days the Governor is required to select two arbitrators.

I heard the evidence of Mr. Smith and Mr. Hammond relative to my appearance before the board that arbitrated the Seaboard Air Line and Central property, and their reference to the statement of mine in which they stated that I had advised 33⅓% of the value of the road should be deducted prior to the levying of the assessment. In other words, that railroad property was not to be returned for taxation in Georgia at more than 66⅔% of its value. I would say that I stated substantially what was taken down by the Stenographer in the Seaboard Air Line case. I have at different times appeared before these boards of arbitration, of course frequently, and can only state in a general way what has been my suggestion to the board in passing upon this property and giving them some idea of how I reach my assessments. It was purely voluntary upon my part. The law does not require me to appear before a board of arbitrators—notwithstanding my distinguished friend, Mr. Wright, that it was my duty to do so. When I have made
251 up my assessment as the law directs and the matter is turned over to the board of arbitrators my connection with it officially ends. I did not advise any board of arbitration after reaching the true market value to reduce it 33⅓% and tax it at ⅔ of its value; for the reason that it was at that value that all other property was assessed in Georgia. I invoke the recollection of some of these gentlemen who were connected with the arbitration board in 1903, when I appeared before the board. My recollection is that Mr. Alex. Smith was on the board himself, in the case of the Central, when the assessment of its franchises under the new law was first up before the board, and I certainly would not have stated that it was to be returned at ⅔ of its market value. Mr. Smith and Mr. Hammond doubtless got the ⅔ idea from Col. Lawton and other gentlemen, who were insisting that that was the value their property ought to be returned at, and that I stated to these gentlemen in my assessments growing out of the conflicting opinions of myself and the railroad authorities as to what was a proper basis upon which to assess railroad property. Some of these gentlemen thought it ought to be based on the market value of the stock, or the market value of the bonds to ascertain what was the value of the property. Others contended that it ought to be based on the net earnings of the
252 stock as shown by the Railroad Commission. Others that it ought to be based on the returns made to me under the franchise law, taking into consideration all of these things, as to the value of the stock, bonds, the operating expenses, the gross income

and the net income. Among all these conflicting opinions I tried to reach what I though- was a fair market value of the property; and taking all these methods into consideration, it was my purpose always to do the roads absolute justice. I will add further that they contended frequently that my capitalization of the net earnings on the 6% basis was entirely too low. I think that Col. Lawton will remember that in his case he thought 7% or 8% was low enough. With all these things to harmonize I did my best, taking everything into consideration to arrive at what I thought was a fair market value, and I made arbitrary reductions several times, varying from 30% to less. The railroads were required to swear that they returned their property at its full market value. I have stated, and I repeat that in making the reductions I spoke of, I made them for the purpose of getting at the true market value and not for the purpose of getting at ⅔ of the market value.

Cross-examination:

That is the only purpose for which I have taken off this ⅓; it has been my practice to assess it otherwise in the State of Georgia. I remember all about the letters of July 25, 1905, Aug. 14, 1905, addressed to Mr. Forrest Adair, Vice President of the Atlantic
253 Water and Electric Power Co. The letters shown me are those written by me to him, I will state the circumstances that lead up to the writing of these letters. Mr. Adair made no return to me of the value of his franchise. He gave as the basis of his assessment what purported to be gross earnings, operating expenses, net earnings of the company for the first three months of its operation. That disclosed a very large earning power, and based upon a capitalization of the net earnings at 6% would have put a heavy burden upon the property. In a personal interview with Mr. Adair and Mr. Spalding, who was attorney for the Company, I told Mr. Adair that I could not do otherwise than use these figures in making the assessment upon 6% capitalization of the earnings, which would make the value seemingly very excessive. They said to me this is a new property that has hardly been installed. Since we made the returns we have had bad luck; we were imposed upon by people who furnished us machinery. We had a great blow out and tore up a whole lot of our property, and have had to spend a great amount of money for repairs, etc. We think you ought to take into consideration these facts following the first three months' service of the Company in fixing your valuation." Based upon his contention, and with the desire to do the Company no injustice, and to tax them at what the law required, at something like their market value, I agreed to a
254 reduction of 33⅓%. I think perhaps I should have stated in that letter that it was done with that end in view; but those are the facts; that it was done with the desire to do this Company no injustice. I assessed their franchise at the figures stated in the letter—$424,000 in round numbers. I capitalized $60,000 net earnings on a basis of 6% and reduced the assessment ⅓. I did it upon the idea that we wanted to get at the market value and did not want to do these people any injustice. In view of what I have

stated in these letters, that the value of the property was a million dollars, and that I proposed to assess it on a basis of $60,000 net income, and reduce the assessment ⅓ I might have unintentionally created a different impression; but I state that it has always been done on the idea of reaching the market value of the property. When I have reached the market value of railroad property I have not always made a practice of reducing it one-third. I reduced it arbitrarily—not necessarily on a 33⅓% basis. Not substantially that.

Almost all assessments of railroad property have resulted from awards of boards. In 1903 we had an entire reorganization of the tax system growing out of the franchise tax act. If you will examine those returns you will find that these assessments are not the assessments of the Comptroller, but are the awards of the arbi-
255 trators—that is for 1903. The purpose was to try to equalize the returns, and the boards have fixed the values. They sometimes reduced my assessments as much as 80%; some instances 40 and 50%. My assessments would necessarily be the full market value, and in a great many instances it was beyond the market value if their awards — correct. Boards of arbitration have reduced my assessments from 75% to 80% and it is natural to believe they thought my assessments was largely in excess of the market value. As to the 80% I am referring to two or three cases, not to the average. I have here two or three cases where my assessments were reduced 80%. The Comptroller's assessment upon the franchise of the Southern Railway was $6,581,297, while the arbitrators valued it at $1,650,600. That was only on the franchise. I assessed the Alabama Great Southern at $288,000; the arbitrators $43,740. I assessed the Atlantic Coast Line at $4,662,000; the arbitrators valued it at $2,464,640. The Atlanta & West Point assessment by the Comptroller was $1,615,800; the arbitrators' value was $486,440. I assessed the Central franchise at $5,500,000; the arbitrators' value was $2,830,237. In these cases the franchise alone is referred to and do not cover the tangible property. I have always taken the position in getting at the value of the franchise that the sum of the value of the tangible property and the franchise was equal to the value of the whole property. It is not true that the result of these assessments in almost every case was that ⅓ has been
256 deducted from what I considered was a fair market value by the board. They did not consider a fair market value what I considered it. They did not sustain my assessments. I was obliged to make my assessments upon the basis of the full market value of the property. Q. And they deducted ⅓? A. I think they did. I think that was the custom.

I have never denied the correctness of the report of my statement before the Central board of arbitrators in 1905, which was introduced here. It is possible that I used that language as there stated. As you doubtless know, I am not accustomed to talking like lawyers to juries and all that sort of thing, and I may not have been particular enough in the language I used to convey the idea. There was no purpose to conceal anything, or to do anything that was not upon the line I have indicated. From my reference to the opinion of

Mr. Boykin Wright, Attorney-General, I did not mean that even in matters where the Attorney-General advised me I deemed it to be my duty to set up my opinion of the law as against his. I very frequently differ with lawyers, some others as well as the Attorney-General. When the Attorney-General advised me to do anything that it was my duty to do and supported it with law then I acted upon it; but when he merely gave it as an official opinion not supported by law, I did not. Whenever he simply gives his opinion unsupported by law, my opinion is as good as his.

257 Redirect:

In assessing railroad property my purpose was never to make any discrimination. I have tried all my life to be just and fair to everybody, and did the best I could to carry out the law. I may have made mistakes sometimes, like most people; I don't claim to be infallible. In assessing other corporations, or accepting their returns I did not make any discriminations. I think every gentleman who has been connected with the railroads in Georgia will do me the justice to say that. I have never given instructions to Tax Receivers and Tax Collectors or authorized or attempted to authorize any of them to make any discrimination, and if there ever was a case where the Comptroller might be moved to do other than as the law and what he believed his duty required, it would have been in the case of Col. Lawton's railroad and Maj. Cumming's railroad. In all instructions I have given to the Tax Receivers, Tax Collectors, or tax officers, I have tried to mete out absolute and equal justice to everybody at all times. If I have not done so it has been because I did not know how to do it.

After I made my assessments and the arbitrators had been appointed, they then arbitrated on the property: I never undertook to advise them what to do. I answered inquiries as to how I reached my conclusions as to values, and how I assesses these proper-
258 ties, and I took the market value of the stocks and bonds as far as I was able to obtain them, getting all the information I could to arrive at the value.

LAWTON & CUNNINGHAM,
ALEX. C. KING, *Pl'ff's Att'ys.*
JOHN C. HART.
JOS. D. KILPATRICK.

(*Order.*)

The foregoing is approved and ordered filed as a brief of the material portions of the evidence in said case and is made a part of the record therein.

This Feb. 2nd, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 2nd day of Feb., 1906.

T. H. JEFFRIES,
Deputy Clerk.

259 STATE OF GEORGIA, *County of Fulton, City of Atlanta:*

I hereby certify, That the foregoing pages, hereunto attached, contain a true and complete Transcript of such parts of the Record as are specified in the bill of exceptions and required, by order of the Presiding Judge, to be sent to the Supreme Court in the case of Central of Georgia Ry. Co. Plaintiff in Error, *vs.* Wm. A. Wright, Comptroller-General Defendant in error.

I further certify, That the — Term of said Court, at which said case was tried, adjourned —— 1900. All of which appears from the Records of said Court.

Witness, My signature and the seal of said Court, this the 17 day of Feb., 1906.

ARNOLD B. ROYLES,
Clerk Superior Court Fulton County, Ga.

Filed in Office, Feb. 17, 1906.

LOGAL BLECKLEY,
D. C. S. C. Ga.

260 33 Atlanta, October Term, 1905.

CENTRAL OF GEORGIA RAILWAY COMPANY
v.
WRIGHT, Comptroller General, *et al.*

By the COURT:

1. Stock in an Alabama railroad company whose lines lay outside of Georgia was owned by the Central Railroad and Banking Company of Georgia, a domestic corporation. To secure an issue of bonds that company conveyed the stock by deed of trust to a New York trust company, and an entry of transfer of the stock to the trust company was made on the books of the Alabama corporation. The Central Railroad and Banking Company of Georgia went into the hands of a receiver, its assets were disposed of at judicial sale, and the Central of Georgia Railway Company, a new corporation chartered under the laws of Georgia, became the owner of its properties, including the equitable interest in the Alabama stock. The New York trust company has the physical possession of the stock certificate, as well as the legal title thereto, but every beneficial interest, including the right to receive dividends and to vote the stock, as well as the equity of redemption, is owned by the Central of Georgia Railway Company, subject only to its compliance with the terms of the bonds to secure which the deed of trust was given. *Held,* that the substantial, beneficial ownership of the stock being in the
261 Central of Georgia Railway Company, that Company is liable to be taxed thereon in Georgia.

2. On all other points presented by the record, this case is controlled by the decision in Georgia R. Co. *v.* Wright, *ante.*

262 CANDLER, *J.:*

This case differs but slightly from the case of Georgia R. Co. *v.* Wright, *ante.* No question or *res adjudicata* or of the statutes of limitation is involved in the present case, but otherwise the two cases are identical in principle, save as to the one question now for determination. That question grows out of the peculiar character of the ownership by the Central of Georgia Railway Company of its half of the capital stock of the Western Railway of Alabama. It appears that this stock was originally owned by the Central Railroad and Banking Company of Georgia, which company, in 1887, conveyed it by a deed of trust to the Central Trust Company, of New York, to secure an issue of bonds amounting to five million dollars. In 1892 the property of the Central Railroad and Banking Company was placed in the hands of a receiver in the circuit court of the United States, the equitable interest in this stock being part of the property turned over to the receiver. Subsequently, pursuant to orders granted by the United States court, the receiver pledged this equitable interest to secure a loan of money, and the Mercantile Trust Company, of New York, eventually became the owner of the equity by purchase at public sale. The property of the Central Railroad and Banking Company was sold under an order of court, and subsequently the Central of Georgia Railway Company, the present plaintiff in error, was incorporated, and became the
263 owner, by successive transfers, of the equitable interest in this stock. Under the terms of the trust deed from the Central Railroad and Banking Company to the Central Trust Company, the stock was transferred on the books of the Western Railway of Alabama, and stands in the name of the Central Trust Company. The physical possession of the stock certificate is also in the latter company. The grantor in the deed, however, is allowed to receive the dividends earned by the stock, contingent only upon the payment of interest on the bonds to secure the payment of which the deed of trust was given, and has the trustee's proxy to vote the stock in all elections of the Western Railway of Alabama. In short, the property which the stock represents is situated in Alabama; the stock itself and the legal title to it under the deed of trust are in New York; the beneficial ownership of the stock and the right to vote it, to receive its dividends, and to acquire the legal title to it upon the payment of the bonds, are in the Georgia company. The question is, where is the situs of the stock for purposes of taxation.

We have seen, in the case of Georgia R. Co. *v.* Wright, *supra,* that the situs of stock in a foreign corporation, for the purposes of taxation, is at the domicile of the owner of the stock. Now, the ownership of the stock involved in the present case is, as it were, split. The Central Trust Company, of New York, is the owner of the legal title, and the plaintiff in error owns the equity of redemption and the right, on compliance with the terms of the
264 deed of trust executed by its predecessor in title, to enjoy every substantial benefit flowing from the stock. We agree with counsel for the railroad company that the deed of trust comes squarely within the terms of the Civil Code, §2771, and that it

conveyed to the trustee the full legal title to the stock during the life of the bonds which it was given to secure, subject to be defeated by the payment of the principal of the bonds at maturity, together with interest as it accrued. That, however, does not settle the question of taxable ownership in favor of the contentions of the plaintiff in error. For we find that in Georgia the law looks, in matters of taxation, rather to the substantial, beneficial ownership of property conveyed under the Civil Code, §2771, than to the shadowy, technical ownership of the legal title. Thus, in the Political Code, §778, it is provided that "while the public may treat the property as belonging either to the maker or the holder of a bond for titles, when the latter is in possession, yet as between the parties the one receiving the rents or enjoying the use is liable for the tax." And in Wells *v.* Savannah, 87 Ga. 399, Mr. Chief Justice Bleckley, delivering the opinion, used the following apt and pointed language, the application of which to the case now in hand seems irresistable: "The value of property consists in its use, and he who owns the use forever, though it be on condition subsequent, is the true owner of the property for the time being. * * * Where taxation is ad valorem, values are the ultimate objects of taxation, and
265 they to whom the values belong should pay the taxes." To the same effect see National Bank *v.* Danforth, 80 Ga. 55. We are not unmindful of the fact that many eminent authorities, cited in the brief of counsel for the plaintiff in error, sustain the contention that the situs for taxation of property conveyed by a deed of trust is at the domicile of the trustee, who holds the legal title; but the cases cited seem to rest mainly on statutory grounds. As was said in Dorr *v.* Boston, 6 Gray (Mass.) 132, relied on by counsel for the plaintiff in error: "The rules of taxation are wholly of statute provision." Our own statutes, and the decisions of our court of last resort, lay down a different principle, and by that we are bound.

The Central of Georgia Railway Company receives the dividends, votes the stock, and has every beneficial interest in the property except the doubtful one of physical possession. In accordance with the Georgia authorities which we have cited, we therefore hold that it is liable to pay the tax. It does not matter that it never owned the legal title at any time, and is not a party to the deed of trust by which it was conveyed to the Central Trust Company nor to the bonds the redemption of which by it is necessary to its ownership of the legal title. The important fact is that it now has the substantial, equitable, taxable ownership of the property.

As has been indicated, on all points presented by the present record which are not dealt with in the foregoing discussion,
266 the case of Georgia R. Co. *v.* Wright, 124 Ga., 96, is controlling. As the only tax sought to be enjoined in the present case is that for the year 1900, the directions given in the former case are not pertinent to this.

Judgment affirmed. All the justices concur.

267 34 Atlanta, October Term, 1905.

GEORGIA RAILROAD AND BANKING COMPANY
v.
WRIGHT, Comptroller General, *et al.*

By the COURT:

1. In a suit in equity in the circuit court of the United States A and B were nominally codefendants, though in reality B's interests were adverse to those of A, and identical with those of the plaintiff. Judgment was rendered for the plaintiff; whereupon A notified his codefendant to join in an appeal. This B declined to do, expressing himself as content with the decree rendered; and A then took an order allowing him to sever and appeal alone. On final trial in the United States Supreme Court the judgment of the trial court was reversed and the original bill dismissed. *Held,* that in a subsequent action by B against A growing out of the same cause of action in the State courts, B was estopped to set up any matter which was or might have been pleaded by him in his own substantial interest in the Federal Court.

2. A suit to enjoin the collection of taxes for one year is no bar to a suit to enjoin similar taxes for another year. This is so because the taxes for each year constitute a separate cause of action.

(Lumpkin, J., dissents.)

268 (Per LUMPKIN, *J.*:)

2 (*a*). If there is any estoppel by judgment at all in this case, under the pleadings and decree in the record from the Federal court it extends not alone to the tax of one year but to the taxability of the stock. Under the pleadings and evidence before it and the prayers of the bill, the decree of the circuit court of the United States contained the following: "It is further ordered and adjudged that the said William A. Wright, comptroller-general, is without any authority of law to undertake to collect taxes upon said shares of stock, and is not authorized as comptroller-general so to do, and he is hereby perpetually enjoined from issuing any execution or taking any steps to collect said taxes upon said shares of stock, and that the said Georgia Railroad and Banking Company is enjoined from making any return of said shares of stock for the purpose of taxation, or from paying any taxes thereon, or doing any act or thing recognizing liability of said shares of stock to be taxed." This was the decree reversed by the Supreme Court of the United States.

3. The case of Wright *v.* Southwestern R. Co., 64 Ga., 783, announced as the law of this State that the situs of stock in a foreign railroad corporation whose road was located outside of Georgia was in the State where the road was located, and that therefore the stock was not taxable in this State. That case was of binding, statutory effect until the passage of the act approved October 20, 1885, which
269 gave such stock a situs for purposes of taxation in Georgia.

4. Under the title, "An act to provide for the correct re-

turns of the property in this State for the purpose of taxation, and for other purposes," the General Assembly could constitutionally enact that certain specified objects should be considered personal property for the purpose of taxation.

5. The failure of the compilers of the Code of 1895 to embrace therein the provisions of the act of 1885, referred to in the third headnote, did not, in the absence of conflicting statutes in that code, amount to a repeal by implication of the portion of the act referred to; and that portion of the act is still the law of Georgia.

6. The failure of the taxing authorities to directly tax shares of stock in domestic corporations whose property is located in Georgia as property in the hands of the shareholders (the corporate property being taxed instead), while at the same time levying a direct tax upon shares of stock in foreign corporations whose property is outside the State belonging to citizens of Georgia, is not a denial to the holder of the foreign shares of the equal protection of the laws.

270 7. It is not in this case necessary to determine whether shares of stock in a domestic corporation in the hands of a stockholder are required to be taxed as such in order to comply with the uniformity clause of the constitution. Nor is it necessary to determine, if domestic shares are taxable, whether it would be double taxation to assess them for taxation in the hands of the shareholder and also include them in the return made by the president of the corporation as required by law.

(Per CANDLER, *J.*:)

7 (*a*). All property in the State, not exempt under the constitution, must be taxed. Stock in corporations is property. When the corporate property is in Georgia, a tax upon it is in effect a tax also upon the stock. When the corporate property is outside the State and cannot be taxed, and the stock is held by a citizen of Georgia, the stock must be directly taxed as the property of the citizen. This is not a violation of the constitutional provision that "all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

8. The court below was fully authorized to find that in the administration of the law the policy of the State was not such as to

271 deny to the plaintiff in error the equal protection of the laws.

9. The sections of the Political Code which prescribe the steps to be taken by the comptroller-general in the event of the failure of individuals or corporations to make returns for taxation are not restricted to cases where no return whatever is made, but apply equally to cases where property owned by the citizen and subject to taxation is withheld from the return.

10. The acceptance by the comptroller-general of a return from which taxable property of the citizen has been omitted does not bar the State of its right subsequently to proceed against the delinquent for the tax due on the omitted property.

11. The Georgia scheme of taxation requires the citizen to know
at property owned by him is subject to taxation and contemplates
at he will disclose it fully to the taxing officer. Every opportunity
the way of notice, protest, hearing, and arbitration is afforded him
correct any mistake of that officer and to obtain exact and even
stice. To the defaulter no "machinery" is furnished for the cor-
tion of his own error; he is entitled to no notice, hearing, or arbi-
tion, but the officer is required, from the best information ob-
tainable, to ascertain the value of the property and assess it
2 accordingly. This scheme of taxation is not unconstitu-
tional.

12. It does not appear that the comptroller-general, who, in arriv-
g at the value of the property taxed, was only obliged to proceed
on "the best information he could procure," made an excessive
essment.

13. The fact that the plaintiff in error made annual statements
owing its ownership of the stock sought to be taxed, and that these
tements were accessible to the comptroller-general, does not bar
e right of the State to collect the tax on the stock for the years
en it was not returned.

14. Until the passage of the act approved November 11, 1889,
xes did not bear interest in this State.

15. The assessments made showed on their face every juris-
tional fact necessary to authorize the comptroller-general to pro-
d thereunder.

16. A statement made to the taxing officer, "for the purpose of
rnishing the office of the comptroller-general with information
sought by said office, and not for the purpose of making a
3 return of property for State taxation," cannot be treated as in
any sense a return.

17. Section 3777 of the Civil Code, providing a bar for the State
certain cases when the citizen would under like circumstances be
rred, is in derogation of the common law and of the right of the
ate to exercise its sovereign power of taxation, and should be
ictly construed.

18. Section 3775 of the Civil Code, providing an equitable bar
cases where "from the lapse of time and laches of the complain-
t, it would be inequitable to allow a party to enforce his legal
ghts," is not available to a complainant in an equitable proceeding
enjoin the enforcement of a purely legal right.

19. A tax is not a debt in the sense that it will be barred by a
tute of limitations against "actions upon open account, or for the
each of any contract not under the hand of the party sought to be
arged, or upon any implied assumpsit or undertaking."

20. The act of 1887 (Pol. Code §§890, 891), when construed as
a whole, provides a statute of limitation against the right of
4 the State and its subordinate public corporations to enforce
a lien for taxes. Such a lien is barred not only by a failure
have the proper entries made on the tax execution and recorded
required by the act, but also by a failure to issue the tax execution
thin seven years from the date that such execution may be lawfully

issued. The lien of the State or its subordinate public corporations is to this extent placed by the act above referred to fully under the operation of the "dormant-judgment act." (Candler, J., dissents.)

(Per CANDLER, *J.*:)

20 (*a*). Sections 890 and 891 of the Political Code interpose a bar to the enforcement of claims for taxes only after they have been placed in execution, and do not apply to the State's claim for taxes before an execution has been issued.

21. The statute of limitations did not run against the State during the time that the comptroller-general was enjoined by the Federal court from issuing any execution for taxes on the stock in dispute.

275 By an act approved February 27, 1875 (Acts 1875, p. 235), the General Assembly authorized the Georgia Railroad and Banking Company and the Central Railroad and Banking Company of Georgia to become purchasers of the Western Railroad of Alabama, its property and franchises or any part thereof, at any sale of the property that might be had in Georgia or Alabama or both, the act providing that the companies mentioned "may hold the title to the same under their existing corporate capacities, or may acquire and hold stock in the present Western Railroad Company of Alabama, or any new corporation that shall be organized to take the place of the same." Under this act the two railroad companies referred to purchased, on September 1, 1875, each an undivided one-half interest in fee of the property and franchises of the Western Railroad Company of Alabama. On May 7, 1881, the Georgia Railroad and Banking Company leased to William M. Wadley and assigns all of its interest in the Western Railroad of Alabama for a period of ninety-nine years from April 1, 1881, "and he and his assigns have remained in possession thereof ever since, and have, to the exclusion of (the Georgia Railroad and Banking Company), controlled, managed and used said railroad and its franchises and received all the gross earnings of said half interest; have paid one half of the operating expenses, taxes, and other fixed charges; and have retained for themselves a half of the net earnings, when there were any net earnings." In October, 1882, the

276 two railroad companies (which, for convenience will be called the Georgia and the Central railroads), acting in concert, procured their incorporation under the laws of Alabama as the Western Railway of Alabama; and the Georgia Railroad made a deed to the new corporation, conveying all of its interest in the railroad properties already mentioned. The Western Railway of Alabama was eventually capitalized at $3,000,000, and one half of the stock, or fifteen thousand shares, was issued to the Georgia Railroad. William A. Wright, comptroller-general of Georgia, early in the year 1905, made a demand upon the Georgia Railroad for taxes on these fifteen thousand shares of stock for each of the years from 1883 to 1904 inclusive, with interest on the tax of each year from December 20 of that year at the rate of seven per cent. per annum, the aggregate of the principal of the taxes demanded being $125,974. The de-

mand was refused; whereupon the comptroller-general issued twenty two executions, aggregating the amount mentioned, and placed them in the hands of Nelms, sheriff of Fulton county, for levy. The present suit arises upon the petition of the Georgia Railroad to enjoin the enforcement of the executions or the collection of the tax on its stock in the Western Railway of Alabama for the years mentioned. The petition and the amendments thereto are voluminous, and together with the answer of the defendants, present a large number of points for adjudication. In the interest of brevity these points will not be enumerated at this state of the discussion,
277 but will be taken up and disposed of seriatim. The trial court denied an injunction, and the plaintiff excepted.

Joseph B. & Bryan Cumming, Alexander C. King, Joseph R. Lamar, and Sanders McDaniel, for plaintiff.

John C. Hart, attorney-general, Boykin Wright and Hoke Smith, *contra.*

CANDLER, *J.* (after making the foregoing statement):

1. Shortly after the lease by the Georgia Railroad to Wadley was made, it was assigned to the Louisville & Nashville Railroad Company, which subsequently became the sole lessee of the Western Railway of Alabama; and in 1899, the Atlantic Coast Line Company acquired a half interest in the lease. Under the terms of the lease, the lessee companies were bound to pay all taxes that might be collectible from the lessors. In August, 1901, the Louisville & Nashville Railroad Company and the Atlantic Coast Line Company, citizens respectively of Kentucky and Virginia, filed in the United States circuit court for the northern district of Georgia a bill in equity against Wright, comptroller-general, and the Georgia Railroad and Banking Company, reciting that the comptroller-general had demanded of the Georgia Railroad taxes upon its fifteen thousand shares of stock in the Western Railway of Alabama for the year 1900, that under the lease to them the lessee companies, and not the Georgia Railroad, would have to pay the tax if it were collected; that under the laws of Georgia the shares in question were not subject to taxation; and praying that the comptroller-general
278 be enjoined from collecting, and the Georgia Railroad from paying, the tax demanded. On the hearing before the judge of the circuit court an injunction was granted. The comptroller-general, desiring to appeal the case, served on his codefendant, the Georgia Railroad, the following written notice: "A decree having been entered in the above stated case against the defendants, and William A. Wright, comptroller general, one of the defendants, desiring to appeal to the circuit court of appeals, you as a codefendant therein are hereby respectfully notified to appear and join in the appeal." Service of this notice was acknowledged, and the reply made thereto that "Defendant hereby refuses to join in said appeal, being content with the decree rendered in said cause." An order was then taken by the comptroller general permitting him to make the appeal alone, and this was accordingly done. The circuit court of appeals affirmed the decision of the circuit court, and the case

was then taken by certiorari to the Supreme Court of the United States, where the decisions of the courts below were reversed, and the cause "remanded to the circuit court of the United States for the northern district of Georgia, with directions to dismiss the bill of complaint." The mandate of the Supreme Court was duly made the judgment of the circuit court. In their answer to the petition filed by the Georgia Railroad in the present case, the defendants pleaded *res adjudicata*, or, to be more accurate, estoppel by judgment, claiming that the Georgia Railroad is concluded by the
279 judgment against it entered in accordance with the mandate of the Supreme Court of the United States, whereby the original bill of complaint was dismissed; and this plea raises one of the most difficult and important questions in a case abounding in questions of that character.

In the suit in the Federal court the Georgia Railroad was nominally codefendant of the comptroller-general, but in reality an adverse party at interest. The judgment enjoining it from paying the tax was exactly what it desired, and its interest lay in affirming, rather than in disturbing that judgment. Consequently, when its codefendant, the comptroller-general, took the case to the highest court, if it desired, in its own name, to be represented in the appellate proceedings as to its real and substantial, rather than its fictitious interests, it had every oportunity by appropriate adversary pleadings to place itself nominally as well as really at arm's length with its codefendant. It preferred, however, to leave its lessors to defend its substantial rights, and to allow the judgment, nominally against it but really in its favor, to remain undisturbed by any act of its own. The judgment of the Supreme Court of the United States was rendered in a case to which, nominally, it was not a prrty, but which involved questions very vital to it and to which it had every opportunity to be made a party in its own name. The judgment against the Louisville & Nashville and Atlantic Coast Line companies necessarily and in terms carried with it an adjudication that
280 the Georgia Railroad was liable for the tax on this stock for the year 1900; and when, in accordacne with the mandate of the Supreme Court of the United States, the original bill in equity filed by the two plaintiff companies was dismissed, the Georgia Railroad was concluded as to all questions growing out of that cause of action which were or might have been raised by it to protect its interests in that suit. "The mere circumstance of any persons having been formally arrayed on the same side in a suit is immaterial,—and it is agreed upon now, that they will be estopped by a decision on a matter which was actually in issue between them, and as to which they had an active controversy against each other." Hukm Chand, Res Adj. § 78; Van Fleet, Former Adj. § 256, p. 576; 24 Am. & Eng. Enc. L. (2d ed.), 733; 1 Dan. Ch. Pl. & Pr. (6th Am. ed.) 659; Foster's Fed. Pr. § 300; Case *v.* Beauregard, 101 U. S. 688; Corcoran *v.* Chesapeake Canal Co., 94 U. S. 741; Riley *v.* Bank, 81 Md. 14, s. c. 31 Atl. 585; Louis *v.* Brown Township, 109 U. S. 163; Scotland County *v.* Hill, 112 U. S. 183; Waldo *v.* Waldo, 52 Mich. 91, s. c. 17 N. W. 709.

2. Counsel for the Georgia Railroad, however, contend that even if it is concluded by the judgment of the Supreme Court of the United States as to its liability for the tax sought to be enjoined in the proceeding before that court, the estoppel of the judgment extends only to the question of the railroad's liability for the tax for the year 1900, and that it is not cut off from contesting
281 the validity of the tax for all the other years involved in the present suit, from 1883 to 1904, inclusive. The question turns, of course, largely if not entirely upon whether suits for different taxes, or for taxes for different years, constitute different causes of action; for suits to enjoin the collection of taxes would necessarily be governed by the same principles. In 2 Cooley on Taxation, 845, it is said: "Upon the question whether a judgment establishing a liability to pay taxes for certain years is, in a subsequent action between the same parties, *res adjudicata* as to the liability for taxes of a succeeding year when the facts affecting the liability are the same in the two cases, the authorities do not agree. It is held in Iowa, Kentucky, Michigan, Mississippi, and Tennessee, that the judgment for a tax is conclusive as to that tax merely, and in suits for taxes of other years is important only as a precedent. (Citing Davenport *v.* Chicago R. Co., 38 Ia. 633, 640; Newport *v.* Commonwealth (Ky.), 50 S. W. 845, s. c. 51 S. W. 433; Louisville Bridge Co. *v.* Louisville (Ky.), 58 S. W. 598, s. c. 65 S. W. 814; Michigan R. Co. *v.* Auditor-General, 9 Mich. 448; Lake Shore R. Co. *v.* People, 46 Mich. 193; Adams *v.* Yazoo R. Co. 77 Miss. 194; State *v.* Bank, 95 Tenn. 222; State *v.* Bank, 95 Tenn. 231; Union Bank *v.* Memphis 101 Tenn. 154.) Recent decisions of the Federal Supreme Court maintain the contrary doctrine, but have not met the approval of the State tribunals." In Keokuk R. Co. *v.* Missouri, 152 U. S. 301, relied upon by counsel for the railroad company in the present case, it was held that "A suit for taxes for one
282 year is no bar to a suit for taxes for another year;" and in the opinion Mr. Justice Brown said: "The two suits are for distinct and separate causes of action. If there were any distinct question litigated and settled in the prior suit, the decision of the court upon that question might raise an estoppel in another suit upon the principal stated in Cromwell *v.* County of Sac., 94 U. S. 351. But, as was held in that case, where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estopped only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. * * * In the case of Davenport *v.* Chicago R. Co., 38 Ia. 633, 640, the Supreme Court of Iowa held that a decree in favor of a railway company in a suit for taxes for a prior year would not estop the State from collecting the tax for a subsequent year, each year's taxes constituting a distinct and separate cause of action. 'The cases,' said the court, 'are unlike those where two causes of action (as two promissory notes) forming the subject-matter of successive actions between the same parties, *both growing out of the same transaction*, in which a defense set up in the first suit, and held good, will conclude the parties in

the second. * * * Taxes of separate years do not in any just sense grow out of the same transaction. They are like distinct claims on two promissory notes made upon two distinct and separate, though similar, transactions between the same parties. A judgment
283 on one of such notes, it is quite clear, would not be of any force as an estoppel in an action on the other note between the same parties.' It could never be tolerated that the State should be forever barred in its collection of taxes by an erroneous decision." As indicated by the quotation which we have made from Cooley on Taxation, however, the Supreme Court of the United States has not adhered to the principles announced in the case cited. See New Orleans *v.* Citizens Bank, 167 U. S. 371; Baldwin *v.* Maryland, 179 U. S. 220; Deposit Bank *v.* Frankfort, 191 U. S. 499. In Newport *v.* Commonwealth (Ky.), 50 S. W. 845, it was held that a judgment for the defendant in an action to recover taxes for one year is not a bar to an action to recover taxes on the same property for another year. Hazelrigg, C. J., and Burnan, J., concurred in a separate opinion on this branch of the case, which is reported in 51 S. W. 433, and from which the following forcible language is quoted: "The power to tax is a high governmental power, exercised against the will of the person taxed, and, in our opinion, a decision as to one cause of action arising under a tax statute is no more binding upon the government or the citizen than the construction of a penal statute would be in a second prosecution against the same person for an offense exactly similar. The former adjudication would, in such case, have weight as a precedent, but would not bind the parties by way of estoppel. The rulings of the court upon the legal questions involved are authority here to the extent, and no further, that like decisions would be in a suit between different parties. As
284 matter of public policy, and upon grounds of public necessity, we think the principle of *res adjudicata* ought not to be applied to questions of taxation where the State is exercising its sovereign power." In Georgia authority on the subject now under consideration is scant, and only indirectly in point. Mayor of Savannah *v.* Dehoney, 55 Ga. 33, was a case in which a number of livery-stable keepers filed their bill to enjoin the municipal authorities of Savannah from collecting a license fee or tax on vehicles for transporting passengers. It was held, for reasons which appear in the opinion, that an injunction was properly granted. Subsequently, Feely, one of the plaintiffs in the case cited, brought suit against the city to recover money which it was alleged he had been compelled unlawfully to pay for license fees for the privilege of running omnibuses. On the hearing the final decree in the case of Mayor *v.* Dehoney was admitted in evidence in behalf of the plaintiff. This was held to be error, and the court, through Chief Justice Jackson, said: "It was an agreed or compromise verdict and decree, and that alone should exclude it; but it was not the same tax, not for the same year, not under the same ordinance, and how much it may have prejudiced the city's case we cannot estimate." And in Brady *v.* Pryor, 69 Ga., 697, which was not a tax case, it was held, on the authority of Cromwell *v.* County of Sac. 94 U. S.

351, as to the effect of a judgment upon a subsequent action involving the same issues but a different, though similar, subject-matter,

"That when an issue is in fact litigated and determined, such
285 determination is conclusive upon parties and privies, in any subsequent action in which the same issue is in question, though the subject matter of the action be different. But to invoke successfully this rule, it must be shown that in the former action the issue was in fact litigated and decided. It is not sufficient that it was there so involved that it might have been litigated." Somewhat in point also is the case of Worth *v.* Carmichael, 114 Ga., 699, where it was held, that "where two notes were given upon a consideration arising in one and the same transaction, a judgment rendered in favor of the payee against the maker, upon one of such notes, did not operate to estop the latter from setting up, in a subsequent action brought by the former against him on the other note a defense which was not in issue when the judgment was rendered."

As stated in Anderson's Law Dictionary, p. 157, jurists have found it difficult to define the term "cause of action." It is defined as: "The right which a party has to institute and carry through a proceeding. The act on the part of the defendant which gives the plaintiff his cause of complaint * * * A wrong committed or threatened." *Id.* "Matter for which an action may be brought." 1 Bouv. L. Dic. 295. "A 'cause of action' is the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment." 1 Stroud. Jud. Dict. (2d ed.) 275. See also City of

Columbus *v.* Anglin, 120 Ga., 775 (3). If, as indicated by
286 the definition given by Bouvier, the subject-matter of the suit be the cause of action, there is no room for doubt that the present suit is on a different cause of action from the one instituted in the Federal court, except in so far as it seeks to enjoin the collection of taxes for the year 1900; and this view seems to be in harmony with the great weight of authority in tax cases. Identity of principles involved does not give rise to an estoppel by judgment. It may be controlling as precedent in the decision of the later case; but it does not cut the losing party off from a hearing in court. If such were not the case, to adopt the illustration given in the Kentucky case of Newport *v.* Commonwealth, which has already been cited, a man charged under two indictments for exactly similar offenses against the same penal statute would be cut off, after conviction under one indictment, from setting up any defense under the other. Confusion on this subject, we think, is doubtless responsible for the later decisions of the Supreme Court of the United States to which reference has already been made. Our conclusion is that as to the taxes for the year 1900 the Georgia Railroad is now estopped; for all of the grounds of attack now made on the validity of the tax were, or might have been, urged on the trial in the Federal courts; but as to the taxes for the remaining years between 1883 and 1904, inclusive, it may insist upon all of the grounds for injunction contained in its petition.

287 3. It is contended broadly by counsel for the plaintiff in error that shares of stock in a foreign railroad company, whose line of road lies outside this State, are not taxable in Georgia; and they rest this contention upon the decision in Wright *v.* Southwestern R. Co., 64 Ga. 783, where (p. 799) it was held that stock in railroads without the limits of this State is not taxable here, and that "stock in a railroad is really but so many shares of its property, and that property is real estate, for the most part at least, and taxable by the State in which the road is located." Counsel for the comptroller-general in their brief refer to the language quoted as a "dictum" of Mr. Justice Jackson, who delivered the opinion, and contend that the decision was ill-considered and unsound. It is not contended, however, that the language was obiter, or that the question decided was not necessarily involved in the decision of the case. A careful study of the opinion, as well as of the original record in that case, convinces us that the point was necessary to the decision; and however ill-considered, unsound, or unsupported by authority it may have been, it was the solemn judgment of a full bench, having, until overruled by a later decision or altered by legislative enactment, the force of a valid statute. See Heard *v.* Russell, 59 Ga., 54. The decision was not so much one of taxation or exemption; for, as pointed out in the able brief of counsel for the plaintiff in error, the tax act of 1874, with which the decision had to deal, required that all the property of railroads should be
288 taxed; nor (though the language of the opinion might be considered susceptible of a different construction) did it decide that stock of a railroad or other corporation is not property, for at the time the decision was rendered there was in existence a statute which is still of force, expressly declaring stocks representing shares in an incorporated company holding lands, or a franchise in or over lands, to be personalty. Wright *v.* Southwestern R. Co. adjudicated merely that the situs of stock in a railroad company whose road lies outside the State of Georgia is in the State where the road lies. But by an act approved October 20, 1885 (Acts 1884-85, p. 30), the General Assembly very effectually and emphatically upset the doctrine of that case by declaring (sec. 2) that "personal property shall be construed, for purposes of taxation, to include—all stocks and securities, whether in corporations within this State or in other States, owned by citizens of this State, unless exempt by the laws of the United States or of this State." It follows that if this act was valid and binding, the doctrine of Wright *v.* Southwestern R. Co. ceased to be the law of this State from the date of its passage.

4. It is insisted, however, that the act of 1885, was unconstitutional, in that it contained matter different from that expressed in its title, and, as persuasive evidence of that contention, it is pointed out that in compiling the Code of 1895 the codifiers left out
289 the second section of the act, though other portions of the act were codified. The title of the act is as follows:—"An act to provide for the correct returns of the property in this State

for the purpose of taxation, and for other purposes." The body, so far as it relates to this discussion, has already been set out in the preceding division of this opinion. It is well settled that "provisions germane to the general subject-matter embraced in the title of an act, and which are designed to carry into effect the purpose for which it was passed, may be constitutionally enacted therein, though not, referred to in the title otherwise than by the use of the words 'and for other purposes.'" Banks *v.* State, 124 Ga. 15 and cit. The general subject-matter embraced in the title of the act now under consideration is to provide for the correct returns for taxation of the property in this State. Certainly the ascertainment of what constitutes different classes of property, so as to facilitate the making of correct returns, is germane to that general subject-matter; and we do not hesitate to hold that the attack made upon the constitutionality of the act is without merit.

5. It is further contended, however, that by reason of the fact that this section of the act of 1885 was not incorporated in the Code of 1895, it has been repealed by implication; and in support of this position the cases of Central R. Co. *v.* State, 104 Ga. 831,
290 and Barnes *v.* Carter, 120 Ga. 895, are cited. Those decisions merely hold, as was inevitable, that by the adoption of the Code of 1895 all prior *conflicting* laws were repealed by implication; but they do not go to the length of holding, nor do we know of any authority to that effect, that by the adoption of the code any previously adopted valid and constitutional law, not in conflict with anything contained in the code, was wiped out. It would indeed be an extreme view to hold that the codifiers, whose duties do not require them to pass on the constitutionality of legislation, might, because they considered a certain law unconstitutional, or even through mere oversight, by omitting it from the code, put at naught the solemnly-expressed intent of the legislature; and it would be equally illogical to hold that the enactment of a code of laws carried with it by implication the repeal of other valid laws in complete harmony with the contents of the code. As the second section of the act of 1885 is not in conflict with any of the laws enacted in the adoption of the Code of 1885, we rule that it is still the law of Georgia.

6. There is no arbitrary classification of shares in a foreign railroad corporation for taxation in this State. Shares in domestic corporations are taxed, not in the same manner, but to a like extent with shares in foreign corporations. They are taxed indirectly, through the taxation of the corporation. It is the aim of the State to tax these shares once only in this State—in the case
291 of domestic corporations they are taxed through the medium of the corporate property, while in the case of foreign corporations, where the corporate property cannot be reached, the shares themselves are directly taxed. That this is lawful, and is not a denial of the equal protection of the laws guaranteed by the constitution of the United States, is abundantly established by authority. Kidd *v.* Alabama, 188 U. S. 730; Wright *v.* Louisville & Nashville R. Co. 195 U. S. 219.

7. Nor is this system of taxation in violation of the provision of the Georgia constitution that "all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." This question was squarely decided adversely to the contentions of the railroad company in the case of Wright *v.* Louisville & Nashville R. Co., 195 U. S. 219, and the reasoning of Mr. Justice Holmes, of the Supreme Court of the United States, on that subject, seems to the writer in every way convincing. The case of Burke *v.* Badlam, 57 Cal. 594, is also very strong authority for the position I now take. In that case it appeared that the constitution of California contained provisions very similar to those in our own constitution in regard to taxation. By the organic law "stocks" and "franchises" were declared to be included in the definition of the word "property," and it was provided that all property should be taxed in proportion to its value. It was held that when the corporate
292 property of a company was taxed, this was in effect a taxation of the stock of the corporation also, and that the stock was not liable for separate and additional taxation. Said Ross, J., who delivered the opinion: "What is the stock of a corporation but its property—consisting of its franchise and such other property as the corporation may own? Of what else does its stock consist? If all this is taken away, what remains? Obviously nothing. When, therefore, all of the property of the corporation is assessed—its franchise and all of its other property of every character—then all of the stock of the corporation is assessed, and the mandate of the constitution is complied with." But, it is argued, applying this reasoning to the case in hand, the property of the Western Railway of Alabama is taxed in the State of Alabama, and to subject the shares of stock to taxation in Georgia is to place upon the owner of the shares the burden of double taxation. The answer to this argument, as is pointed out in the case of Wright *v.* Louisville & Nashville R. Co., *supra*, is that the Georgia authorities are bound to tax all property found in Georgia; the shares of stock in the foreign corporation are property, and therefore must be taxed; the corporate property not being situated in Georgia, and it being impossible, therefore, to tax the stock through the medium of the corporate property, the only thing left to the Georgia authorities is to tax the stock directly, as is done in the present case. The Georgia authorities have exacted no double taxation. The fact that Alabama has placed upon the corporate property a tax may work
293 a hardship upon the holder of the stock, but it is not a reason why the mandate of the constitution that all property within the limits of the State not exempt shall be taxed should be disobeyed or disregarded.

A majority of the court, however, do not think that a decision as to the taxability of domestic stock is necessary in this case. This view is as follows: The constitution declares all property subject to taxation, except such as the General Assembly is therein specifi-

cally permitted to exempt. It is not necessary to decide whether shares of a domestic corporation in the hands of a stockholder are required to be taxed as such, in order to comply with the uniformity clause of the constitution. If it is necessary to tax them as such, there is no statute of which we are aware which has the effect to prevent the collection of the tax. Nor are we called upon to decide whether, if domestic shares are taxable, it would be double taxation to assess them for taxation in the hands of the shareholder and also include them in the return made by the president of the corporation as provided by law, and, therefore, if the demands of the constitution would be satisfied by the indirect tax of the shares in the assessment on the corporate return. The precise question presented in this phase of the matter is, whether the uniformity clause is offended by the imposition of a tax on foreign shares. The constitution, with regard to declaring what property is liable for taxation, is self executing. If the legislature, in the scheme
294 for levying and collecting taxes, does not exempt or attempt to exempt property constitutionally liable for taxation, it is no objection that the tax levy is not uniform on the subjects of taxation because in the administration of the law certain property may escape taxation because of the delinquency of the tax officers.

8. In further support of the contention that in the levy of these taxes the railroads were denied the equal protection of the laws, it was claimed that only the Georgia and Central Railroads had been proceeded against for back taxes on shares in non-resident corporations, and that other owners of such foreign shares were not required to pay either present or past due taxes thereon. In support of this claim affidavits of some forty tax receivers of different counties in the State were introduced in evidence to show that during their respective terms of office the owners of shares of stock in foreign corporations residing in Georgia had not returned said stock for taxation, and that it had been the uniform practice of the tax-receivers not to require them to return such stock. The record discloses that "It was admitted that the Georgia Railroad and Banking Company and the Central of Georgia Railway Company were the only persons owning foreign railroad stock proceeded against for taxes on these kinds of shares. The comptroller-general's statement that he knew of no other delinquent was also admitted." Certainly on this showing the court below was authorized to find that there had been no such unequal
295 and discriminating administration of the taxing laws as to amount to a denial to the railroad companies in question of the equal protection of the laws. Affidavits from tax receivers of less than one-third of the counties of the State, coupled with an admission that the comptroller-general had proceeded against the only delinquents who had been brought to his notice, certainly cannot be said to establish that the policy of the State has been and is to single out these two railroads, or railroads as a class, as the only citizens who are to be required to pay taxes on shares of stock in foreign corporations. Clearly there is no merit in this contention.

9. On January 27, 1905, the comptroller-general wrote to the President of the Georgia Railroad and Banking Company the following letter: "The Supreme Court of the United States having recently held, as you doubtless are aware, that the shares of stock of the Western Railway of Alabama owned by the Georgia Railroad and Banking Company are taxable in Georgia, it becomes my duty to assess these shares of stock for taxation for each of the years in which they are in default for their taxes. This assessment is required to be made by the Comptroller-general from 'the best information obtainable.' I desire to proceed to the discharge of this duty intelligently, and therefore respectfully request you to furnish me any data in your possession which will enable
296 me to make perfectly fair, just, and legal assessments of this property. From your long connection with the property as President of the Georgia Railroad and Banking Company, and your familiarity with its value, you doubtless are in possession of information which will very greatly aid me in making an equitable assessment of the property. I trust, therefore, you will submit at your earliest possible convenience any facts or suggestions bearing upon this line which you may deem proper. I would be glad to have any data which you may submit with reference to its value for each year beginning with the year 1883, the year I am informed your corporation became the owner of these shares of stock. I expect to proceed with this matter some time the early part of next week if possible." Other correspondence took place between the comptroller-general and various officers of the Georgia Railroad, including the general counsel, who eventually submitted to the comptroller-general a statement regarding what he considered the value of the railroad property in question, together with a tabulated statement of the dividends which the Georgia Railroad had received from the stock, at the same time protesting that the stock was not liable for taxation, and refusing to make any return of it for that purpose. The comptroller-general thereupon, according to his affidavit, "assessed the same from the best information obtainable." It is insisted with great earnestness and ability that the levy of executions under these circumstances, without giving notice to the railroad company or allowing it any
297 opportunity to be heard as to the basis of valuation upon which the assessment was made, amounted to a seizure of its property without due process of law. It is not claimed that the comptroller general has violated the provisions of any existing statute, but that the laws of Georgia do not provide for the collection of taxes on omitted property after a return has been made by the taxpayer and accepted by the comptroller-general.

The Political Code, § 812, prescribes the method by which "corporations, companies, persons, agencies, or institutions" shall make returns of their property to the comptroller-general for taxation, and provides that "such returns shall be carefully scrutinized by the comptroller-general, and if in his judgment the property embraced therein is returned below its value, he shall assess the value, within

sixty days thereafter, from any information he can obtain, and if he shall find a return of * * * matters required to be returned as aforesaid, below the true amount, or false in any particular, or in any wise contrary to law, he shall correct the same and assess the true amount, from the best information at his command, within sixty days. In all cases of assessment, or of correction of returns, as herein provided, the officer or person making such returns shall receive notice and shall have the privilege, within twenty days after such notice to refer the question of true value or amount, as the case may be, to arbitrators, * * * and their award shall be final."

Section 813 is as follows: "In cases of failure to make re-
298 turn, the comptroller-general shall make an assessment from the best information he can procure, which assessment shall be conclusive upon said corporations, companies, persons, agencies, or institutions." By section 814 it is provided that "In all cases of default of payment of taxes upon returns or assessments, the comptroller-general shall enforce collections in the manner now provided by law." "If any corporation, company, person, agency, or institution, who are required to make their returns to the comptroller-general, shall fail to return the taxable property or specifics, or pay annually the taxes for which they are liable to the State treasury, the comptroller-general shall issue against them an execution for the amount of taxes due, according to law, together with the costs and penalties." § 874. "When there is no return by which to assess the tax, the comptroller-general shall, from the best information he can procure, assess in his discretion." § 879. These sections of the Political Code are thus set out in order that we may have before us at the outset the various statutes bearing on the power of the comptroller-general to collect taxes on property which has not been returned. And at this point we will take occasion to say that in our opinion all considerations of the good faith of the railroad company should be eliminated from this discussion. It may be conceded that the officials of the company honestly believed that this stock was not taxable, and that there has never been on their part the
299 slightest effort to conceal the Georgia Railroad's ownership of it, or to deceive the comptroller-general in any way. In no jurisdiction has the maxim *"ignorantia legis neminem excusat"* been more rigidly applied than in Georgia. The railroad company was bound to know that this stock was taxable, and its mistaken, though honest, belief to the contrary furnishes no excuse for non-payment. The sole question now to decide is, whether or not the steps taken by the comptroller-general to enforce the collection of the tax are legal.

A question of vital importance is whether sections 813 and 874, entitled respectively, "When no return, comptroller to assess," and "Defaulting corporations," have reference only to a total failure on the part of the citizen to make a return, or extend to cases where there has been a return which only partially sets out the property of the taxpayer. The latter contingency is certainly not covered by section 812, which has reference, not to an incomplete return, but to an insufficient valuation by the taxpayer. It must be borne in mind that

tax laws are to be construed liberally in favor of the power of the State to tax. 27 Am. & Eng. Enc. L. (2d Ed.) 699 and note; Board of Commissioners *v.* Anderson, 68 Fed. 341. In our opinion the only rational construction to be placed on sections 813 and 874 of the Political Code is that they cover as well a partial as a total failure to make returns. Any other construction would lead to a manifest absurdity, and would place the State at the mercy
300 of the taxdodger, who, by returning at its full value a mere tithe of his property, would thus escape taxation on the bulk of his estate.

10. The same reasoning is applicable to the contention that by an acceptance of the return on the part of the comptroller-general the transaction is closed, and cannot be reopened by the taxing officers. Such a holding would place a premium on deception, would deny the right of the State to correct mistakes for which its officers were not responsible, and would, in effect, give to the acceptance of a tax return the solemn and binding effect of a judgment fixing the amount of taxable property owned by the taxpayer. "An assessment is not a judgment within the doctrine of *res judicata*, and does not bar or estop a supplemental assessment of property which was, in fact, erroneously omitted, even though its omission in the first instance was the result of a decision by the officers making the regular assessment, holding it to be exempt." 27 Am. & Eng. L. (2d ed.) 701; Sturgis *v.* Carter, 114 U. S. 518. Whatever may be the binding effect of the acceptance of returns by the tax officer in a matter involving judicial action (24 Am. & Eng. Enc. L. 723), it cannot be claimed that the ascertainment whether the returns accepted embrace all the property owned by the citizen is a judicial act. The fallacy of the "closed book" theory is shown, we think, by section 855 of the Political Code, which provides that "Receivers and
301 collectors are required to receive the returns and to collect the taxes thereon for former years, when any person is in default, which taxes shall be assessed according to the law in force at the time the default occurred, and shall be so specified in the digest." It is true that this section in terms refers only to tax-receivers and tax-collectors, and does not mention the comptroller-general of the State. But it must be borne in mind that the section was enacted into law in 1813, at a time when the comptroller-general was merely an auditor of public accounts, and had no powers as a taxing officer, and when all taxable property of every kind was returned to the tax-receiver and collected by the tax-collector. In 1861, for the first time, the comptroller-general was made a tax officer; and it is only reasonable to assume that in delegating to him certain duties which had theretofore been performed by the county officers, the General Assembly intended that he should be clothed with the same powers as they for the complete and efficient discharge of those duties, so far as applicable. If we are correct in this reasoning, the language of Judge McCay in his concurring opinion in the case of Walker *v.* Whitehead, 43 Ga. 551, 552, furnishes an irresistible argument for holding that the comptroller is not concluded by the acceptance of

returns from making a subsequent assessment *for* omitted property. Discussing what is now section 855 of the Political Code, it was said: "That (the taxes) were due five, four, three and two years ago, and have gone unpaid, is no relaxation of the obligation to pay them.

Can it be contended that, because one in 1866 or 1868 man-
302 aged to conceal his taxable property, he is thereby released from his obligation to pay the tax thereon when he finds it no longer possible to hide it? * * * These taxes are just as much due now as they were in the year they were incurred. They are a present, subsisting, legal obligation, and if the remedies provided at the time have proved inadequate to enforce their payment, the State may take any new remedy that may suggest itself. * * * The duty to pay exists *now*, it is a continuing, present obligation and duty, just as imperative today as it was last year. The 866th section of the Code (now Pol. Code, § 855) provides how taxes for previous years shall be given in and paid, and one who today fails to give in and pay taxes upon property not given in and paid in former years, fails in a *present* duty, and it is perfectly competent to affix a penalty on him, not for his past, but for his present and future failures."

Again, by an act of 1813 (Pol. Code, § 847), it is provided that if a person fails to make a return, in whole or in part, it is the duty of the receiver to make the valuation and assess the taxation thereon, and in all other respects to make the return for the defaulting person from the best information he can obtain; while by the act of 1804 and its amendments (Pol. Code, § 949, par. 2, 11), it is made the duty of the tax-collector "to search out and ascertain as far as possible all polls and professions, and all taxable property not returned to the receiver or not found in his digest," and "to issue executions against all tax defaulters who are residents of the counties in
303 which said tax-collectors are holding their offices, for any and every year preceding and including the years for which they are elected, and to collect the tax due from said defaulters, and pay over the same to the proper authorities." Reading together the provisions of sections 847 and 949, and all of the provisions of the code on the subject of the collection of taxes, the conclusion is necessarily reached that there was a legislative intent to clothe the comptroller-general as a tax-receiver and collector with all the powers of the county receiver and collector, wherever applicable to his duties in these capacities, whether the law conferring these powers was in force when the comptroller-general first became a tax officer, or were thereafter enacted.

11. The Georgia law affords to every citizen, individual or corporate, ample facilities for the preservation of his rights as against the tax-gatherer, always provided that he makes a return to the proper officer of the property that he owns. It presupposes that the taxpayer will disclose to the officer all of his taxable property, and it requires him to know whether his property is taxable or not. The requirement of candor in disclosing the ownership of property is really the foundation of our tax system. So long as the citizen complies with that requirement, he is afforded every opportunity to

dispute with the State the question of the value of his property and the amount of tax to be levied thereon. When he fails to re-
304 turn, in whole or in part, fraudulently or through an honest mistake, he then and there becomes a defaulter, and the door of opportunity is closed to him, so far as the right to have the mutual rights between himself and the taxing power adjusted by arbitration is concerned. In other words, ample "machinery" is available to the citizen who makes full returns; deprivation of the right to be further heard is one of the penalties visited upon the defaulter. The collecting officer must ascertain as best he can the amount of property to be taxed, as well as its value, and take summary means for its collection. This, it seems to us, is the scheme of taxation contemplated by the laws of this State. Whether or not it is consistent with a wise public policy we do not undertake to determine. That it is not unconstitution- we are fully satisfied. 1 Cooley on Taxation, 619-624, and cases cited in notes. Board of Commissioners *v.* Anderson, 68 Fed. 341; Lott *v.* Hubbard, 44 Ala., 593; McMillan *v.* Carter, 6 Mont., 215, s. c. 9 Pac. 906; Orena *v.* Sherman, 61 Cal. 101; Tucker *v.* Aiken, 7 N. H. 113; City *v.* Champion, 58 Conn. 268, s. c. 20 Atl. 471; McTwigger *v.* Hunter (R. I.) 29 L. R. A. 526; Board of Revenue *v.* Montgomery Gas Light Co., 64 Ala. 269; Wabash R. Co. *v.* Johnson, 108 Ill., 11; Seigfried *v.* Raymond, 190 Ill. 424; Goodman *v.* Halter (Ind.), 47 N. E. 665; Hagar *v.* Reclamation District, 111 U. S. 701; Pittsburg R. Co. *v.* Baskus, 154 U. S. 426; Du Bignon *v.* Brunswick, 106 Ga. 317.

305 12. As we have seen, the comptroller-general in making his assessment was only obliged to use "the best information he could procure" as the basis of his valuation of the property taxed. There is nothing in the record to indicate that upon that basis the valuation placed upon the shares by the officers was excessive.

13. It cannot avail the Railroad company that during all the years for which the tax now under consideration was levied it had issued annual statements showing its possession of the shares of stock now sought to be taxed, and that the comptroller-general might have ascertained from these statements, which were easily accessible to him, the Georgia Railroad's ownership of the shares. "Estoppels against the State are not favored; and though they may arise from its express grants, they cannot arise from the laches of its officers, since persons who deal with an officer of the government are bound to know the extent of his power and authority." Lott *v.* Brewer, 64 Ala. 287.

14. In the absence of a statutory provision to that effect, taxes do not bear interest. State *v.* Southwestern Railroad, 70 Ga. 32 (8). Section 887 of the Political Code, providing for the payment of interest on tax *fi fas.*, was not approved until November 11, 1889, and consequently the comptroller-general cannot lawfully exact
306 interest on taxes accrued prior to that time. Under the statute cited the interest dates, not from the time of the issuing of the *fi fa.*, but "from the time fixed by law for issuing the same." "Such interest is not in the nature of a penalty." Sparks *v.* Lowndes County, 98 Ga., 284.

15. The assessment made on the stock for the year 1883 (which was identical with those made for the other years involved in this litigation, except as to dates and amounts) was in the following language: "Whereas The Georgia Railroad and Banking Company, a corporation chartered under the laws of Georgia and doing business in this State, having failed and refused to return for taxation for the year 1883, 15,000 shares of stock of the Western Railway of Alabama, an Alabama corporation, said stock being then held and owned by said Georgia Railroad and Banking Company in this State, and having failed and refused to pay the taxes due the State thereon for the year 1883 as required by law, I hereby assess the said 15,000 shares of stock of the Western Railway of Alabama for said year as being then of the value of $1,350,000.00. Said assessment being made by virtue of authority vested in me by law as Comptroller-General, 'from the best information I can procure.'" In the light of what we have held in a preceding division of this opinion in regard to the contention of the plaintiff in error that the levy
307 is a seizure of its property without due process of law, it is only necessary to add that the assessment which has been quoted showed every judicial fact necessary to authorize the comptroller-general to proceed thereunder.

16. It is insisted by counsel for the plaintiff in error that in the years 1903 and 1904 the Georgia Railroad actually made a return of the stock owned by it in the Western Railway of Alabama, though under protest, and that this being so, the comptroller-general had no right, until after compliance with the provisions of the Political Code, § 812, to increase the amount of the return. As it appears from the record, however, that this so-called "return" was merely a statement "for the purpose of furnishing the office of the comptroller-general with information sought by said office, and not for the purpose of making a return of property for State taxation," there is obviously no merit in this contention.

But it is urged that the claim of the State for these taxes is barred by the statutes of limitation; and this contention is based on several different grounds. The Civil Code, § 3777, provides that "When, by the provisions of the foregoing sections (§§ 3760 to 3776 inclusive), a private person would be barred of his rights, the State shall be barred of her rights under the same circumstances." This section became a part of the law of Georgia in 1856 (Acts 1856, p. 237). Up to that time the maxim *nullum tempus occurrit*
308 *regi* obtained in Georgia. Brinsfield *v.* Carter, 2 Ga. 143; Moody *v.* Fleming, 4 Ga. 116 (7); Smead *v.* Williams, 6 Ga. 159. The act of 1856 is plainly in derogation of the common law and of the rights of the State, and, under the well-established rules, must be given a strict construction. In terms it is limited to the "foregoing sections," that is, the preceding sections of the chapter relating to the general subject of limitations; and therefore it will not be extended to bar the right of the State to any actions not provided for by those sections of the code.

18. But it is contended that section 3775 is applicable to this case, and that by the terms of section 3777 the State is barred

by the provisions of the section first mentioned. That section is as follows: "The limitations herein provided apply equally to all courts; and in addition to the above, courts of equity may interpose an equitable bar, whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights." This contention is plainly founded on a misconception of the equitable doctrine of stale demands. The principle that a stale demand will not be enforced is peculiarly applicable to equity practice, is available to the defendant only, and cannot be employed by the complainant in an equitable proceeding to enjoin the enforcement of a purely legal right.
309 Indeed, by the terms of the statute cited, it is restricted to cases where the "complainant" has been guilty of laches and time has elapsed to make his claim inequitable. See also Bisph. Pr. Eq. (6th ed.) § 39.

19. Section 3768 of the Civil Code is also pleaded in bar of the State's right to collect these taxes. That section is as follows: "All actions upon open account, or for the breach of any contract not under the hand of the party sought to be charged, or upon any implied *assumpsit* or undertaking, shall be brought within four years after the right of action accrues." The principal authority relied on by counsel to support the contention that this section covers a claim by the State for taxes is the case of Bristol *v.* Washington County, 177 U. S. 133, 148. That case went to the Supreme Court of the United States from Minnesota, and was decided on the authority of the case of County of Redwood *v.* Winona Land Co., 40 Minn. 512 (also cited as State *v.* Lands in Redwood County, 42 N. W. 473), in which case the Minnesota court held, that by statute in that State the statute of limitations ran against the State the same as against an individual; that a tax was a liability created by statute, and that under a law providing that actions upon a liability created by statute should be barred after six years the State could not put in motion the legal machinery provided by statute for the collection of back taxes after that time. There is a vast difference, however, between a liability
310 created by statute and an open account, a contract not under the hand of the party sought to be charged, or an implied assumpsit or undertaking. The statute passed upon by the Minnesota court, and later by the Supreme Court of the United States, is more closely analogous to section 3766 of our Civil Code, which provides that "all suits for the enforcement of rights accruing to individuals under statutes, acts of incorporation, or by operation of law, shall be brought within twenty years after the right of action accrues;" and if that section were before us for construction, the cases cited would be very strong authority for the proposition that the State's claim for taxes will be barred after the lapse of the period therein mentioned. In view of the fact, however, that we have already decided, independently of statutes of limitation, that the tax involved in this case cannot be collected except for a period of less than twenty years prior to the institution of this

action, any ruling with reference to section 3766 of the Civil Code would be obiter, and manifestly out of place. Nevertheless the writer will take occasion to say that his personal opinion is that under section 3766 of the Civil Code, read in connection with section 3777, and on the authority of the cases of Bristol *v.* Washington County, 177 U. S. 133, and State *v.* Lands in Redwood County (Minn.), 42 N. W. 473, the State is barred of its right to collect back taxes after the lapse of twenty years.

Taxes, however, are not debts within the meaning of the
311 Civil Code, § 3768. "A tax, in its essential characteristics, is almost universally held not to be a debt or in the nature of a debt. The distinction between a debt and a tax is that one rests on contract and the other does not. A debt is a sum of money due by contract, express or implied, while a tax is a charge on person or property to raise money for public purposes, and operates *in invitum*." 27 Am. & Eng. Enc. L. (2d ed.) 580, and cases cited in note. See also DuBignon *v.* Brunswick, 106 Ga. 325. With this distinction clearly in mind, we think there can be no doubt that section 3768 of the Civil Code does not raise any bar to the right of the State to collect back taxes.

20. Finally, sections 890 and 891 of the Political Code are relied on to bar the collection of taxes for more than seven years. My views on this subject are hopelessly at variance with those of a majority of my brethren. I incorporate herewith their views, and will then endeavor to make clear my reasons for dissenting therefrom.

"That invisible person, or power, or being, or entity, no matter what it may be called, which for convenience, under our system of government, we call the State, was endowed in the beginning of republican institutions with many of the attributes of the visible king whose authority to rule was supposed to have its origin in divine right. The maxims that no time runs against the king, and that the king can do no wrong, were applied to the invisible ruler of modern institutions with somewhat the same force and
312 rigor with which they were applied to the king of the olden days. But that which we call the State is also properly call- the public and the people, and the invisible ruler becomes visible by simply opening the eyes to that mass of individuals with whom government originates and through whose representatives government is carried on. The State, that is the public, the people, the ideal sovereign of the more enlightened days of the world, in the steady recession from the selfish, not to say atrocious theory, that the subject exists for the benefit of the sovereign, and the latter has rights before which the interests and welfare of the former must pale and vanish,—in the steady advance in the revolution of thought that government is subordinate to the people, and instead of being their master is their servant, the State has voluntarily come under the operation of the statutes of limitation wholly and unreservedly in nearly every instance where such statutes are applicable to individuals.

"The general rule is that where an individual would be barred by a statute of limitations the State is likewise barred, under the same circumstances. The exceptions to this rule are few in number. The question now is whether the mere naked claim of the State for taxes which it has not sought to enforce by execution is barred by any statute of limitation. If the State has attempted to enforce its claim for taxes by execution, that the execution would become barred in the same time and under the same circumstances that an execution issued under an ordinary judgment would be
313 barred is beyond question. Acts 1887, p. 23; Pol. Code, § 890. The section of the code just cited provides: 'All State, county, city, or other tax *fi. fas.*, before or after legal transfer and record, shall be enforced within seven years from the date of their issue; or within seven years from the time of the last entry upon the tax *fi. fa.* by the officer authorized to execute and return the same, if said entry is properly entered by said officer upon the execution-docket and books in which said entries are now required to be made in cases of entries on executions issued on judgments.' The section immediately following is in this language: 'All laws in reference to a period of limitation as to ordinary executions for any purpose, or to the length of time or circumstances under which they lose their lien in whole or in part are made applicable to tax *fi. fas.*' Pol. Code, § 891. We recognize the rule of construction that statutes derogatory to the sovereign right of the State shall be construed strictly in favor of such right, and that a statue imposing upon the State a limitation as to its sovereign right which is doubtful in meaning or equivocal in its terms must be so construed as to uphold the right and defeat the limitation upon its power. The State surrenders its sovereign right only by express enactment or necessary implication. It is therefore to be determined whether the legislative intent in the act of 1887 was to destroy the right of the State to claim a tax lien against the citizen after the lapse of a given time, or whether it was intended to de-
314 stroy the mere process that might have been issued and leave a lien for taxes still existing for all time when no execution had ever been issued to enforce it.

"Statutes of limitation are statutes of repose. They are intended to relieve against the hardships inevitably incident to the enforcement of demands of long standing, when the lapse of time would necessarily place the person against whom they are enforced at a disadvantage as to their defences. In interpreting the act of 1887, the purpose of such a statute must be kept prominently in view. Construing this act as a whole, its language indicates that the purpose of the lawmaking power was to place the State in regard to its claim for taxes in the same position that a plaintiff in a judgment would be placed as to the enforcement of a right upon which a judgment was founded. While the statute uses the word 'execution' and not the word 'judgment,' there can be no legitimate escape from the conclusion that the legislative intent was to bring the tax judgment of the State within the dormant-judgment law applicable to cases of individ-

uals. The entries required to be made on tax executions are entries similar to those required to be made on 'executions issued on judgments.' That the word 'execution' is to be interpreted in the sense of judgment becomes clear when we refer to the statutes evidently referred to by the expression, 'All laws in reference to a period of limitations as to ordinary executions.' The only law to which
315 this expression can apply is the dormant-judgment act embraced in the Civil Code, § 3761, the effect of which is to destroy the lien of the judgment upon which the execution is based by a failure to enforce the execution, and not merely to destroy the execution itself. That section is in the following language: 'No judgment shall be enforced after seven years from its rendition, when no execution has been issued upon it and the same placed upon the execution docket, or when execution has been issued and seven years have expired from the time of the record, upon the execution docket of the court from which the same issued, or the last entry upon the execution, made by an officer authorized to execute and return the same. Such judgments may be revived by *scire facias*, or be sued on within three years from the time they became dormant.' Unless this is the section referred to, section 891 of the Political Code is meaningless, because there are no laws in this State in reference to a period of limitation as to ordinary executions, but there is the law above quoted which is a period of limitation as to ordinary judgments. While it is to be conceded that the act of 1887 does not in terms declare that the judgment in favor of the State for taxes shall become barred, it is necessarily implied; and unless this implication is allowed to operate, the second section of the act is without meaning, and this anomalous situation arises: that the State is barred where its officers do their duty and issue their executions within due time, but fail to have entries made thereon from time to time as required by law, but the State is not barred when there has
316 been either a negligent or a wilful failure on the part of the public officers to discharge their duties under the law. That part of section 3761 which declares that no judgment shall be enforced after seven years from its rendition, when no execution has been issued thereon, is by necessary implication a part of the act of 1887, and hence when the State has failed to issue an execution for taxes within seven years after the time for the issuing of the execution has arrived, the claim of the State for taxes is barred, and barred for the reason that in this particular the act of 1887 brings the judgment of the State for taxes within the full operation of the dormant judgment act. See in this connection Staten *v.* Railway Co. 111 Ga. 803 (2). For reasons satisfactory to the General Assembly the right of the individual to have a dormant judgment revived within three years after dormancy has not been made a part of what we might properly call the dormant-tax-judgment act. To allow the State after the lapse of seven years to enforce by execution a claim upon a judgment for taxes upon which no execution had been issued would be as antagonistic to the law as to allow an individual to sue on a note under seal upon which a judgment had been rendered and had become barred within less than twenty years simply for the reason

that the original period of limitation applicable to sealed instruments had not expired at the time the judgment had become dormant. The analogy between the two is not altogether perfect, but it exists sufficiently to illustrate the anomaly resulting from the construction sought to be placed upon the act of 1887.

317 "There is no question of fraudulent concealment of property involved here. The same reasoning, that the lapse of four years did not bar the enforcement of taxes because the statute referred to suits, would likewise apply to section 3766, which reads that 'all suits for the enforcement of rights accruing to individuals under statutes,' etc., shall be barred within twenty years. Moreover, under the peculiar language of section 3766, and the construction put upon it by this court in Bigby *v.* Douglas, 123 Ga. 635, and in Savannah Canal Co. *v.* Shuman, 98 Ga. 171, it would seem not applicable here. In some courts it has been held that suits or proceedings in the nature of suits to recover taxes are like actions to enforce statutory rights, and should be barred accordingly, even though taxes be not mentioned in the statute at all. See what is said in the authority referred to by Mr. Justice Candler, County of Redwood *v.* Winona Land Co., 40 Minn. 525–6. If the bar does not attach either in four years or twenty years, then it either attaches to the enforcement of taxes by execution under the Political Code, §§ 890, 891, as to property alleged not to have been returned, or else no statute of limitations applies at all. If no statute applies, then there is no limit beyond which the comptroller-general or tax-collector may not go in issuing *fi. fas.* It is not a mere question as to the taxes of this corporation. The amount involved in this case is of small importance compared to the establishment of correct rules of law as to taxpayers. Every property owner in the State is subject to taxation; and if the

318 tax-collector can go backwards without limitation, and declare that any taxpayer owned certain property at a given date and failed to return it, assess its value from the best information he can obtain, adding interest, and issue executions therefor, it presents a serious question for all the tax-payers of the State. If any other construction were made than that which we give to the statute, few men in the state could feel safe that the titles to their homes and lands might not be subjected for some omission (accidental or intentional) from the tax returns of some former owner (many, years ago perhaps), for which no claim had been made and no execution issued. Liens attach for taxes, not from the date of the execution, but from the tax day fixed by law. A sale to an innocent purchaser even does not divest them. The former owner might have honestly believed the property not returned was not subject to taxation, but this would not save the present owner, unless there is some limitation.

"A construction which would place no limitation upon the right of the tax-collector to issue and enforce *fi. fas.* would mean public disaster. Tax is a valuable and necessary thing for the State, but the security of the citizen is also good. There may be 'tax dodgers,' and men who defraud the government, but tax liens affect the honest as well as the dishonest. Without irreverance, the State in general laws seeks to follow the Divine example, when it is said: 'He maketh

his sun to rise on the evil and the good, and sendeth rain on
319 the just and unjust.' The laws of this State taxing property are uniform. Of course if the law is plain, we must administer it and not change it, whatever may be the result. But it is well recognized that in construing a statute the court may look to the old law, the mischief, and the remedy; and with this in view, the legislative intent in making the laws relating to ordinary executions and judgments becoming dormant, applicable to tax executions, should be considered. If the law is not clear, the reasonableness or unreasonableness of a particular construction is a legitimate subject for consideration. Lombard *v.* Trustees, 73 Ga., 322; Moravian Seminary *v.* Atwood, 50 Ga. 382; 26 Am. & Eng. Enc. L. (2d ed.) 646. Is it reasonable to suppose that the legislature meant to protect purchasers only if the tax-collector had done his duty and issued execution, but left them in danger and with an overhanging lien, for an unlimited time, if he did not issue an execution? True there is no intervening purchaser here. But under the statute there is no distinction; and if there is no bar as to the defendant, there is none as to a purchaser, however honest. Furthermore, the legislature has declared that interest against a taxpayer runs from the time when an execution should have been issued, and this has been construed to mean December 20, of each year. Surely the State did not intend to fix a date when its officer should have issued the execution as a point from which interest should run against a taxpayer, but
not from which the statute of limitations should run in his
320 favor. Doubtless the legislature considered the serious consequences resulting from thus leaving the matter open for action by the tax-collector indefinitely, when they passed the act of 1887, embodied in the sections of the Political Code cited above. If this be not the correct construction, in examining titles no lawyer could give his client any assurance that he would obtain a clear title; for if there were no limitation, the danger would go back to the beginning of the taxing system.

"The constitutional prohibition against granting away the right of taxation (Civil Code, § 5796) has no relevancy, we think, to the case. The constitution prohibits the grant of privileges and exemptions (except as specified) to corporations and other persons. It says nothing of the time when the execution must be issued or enforced. The legislature has passed many acts prescribing the time within which actions may be brought, but these were not considered unconstitutional violations of property or property rights. A similar question has been passed on by the Supreme Court of Montana, in Board of Commissioners *v.* Story, 69 Pac., 56."

With the greatest respect for the profound ability and learning of my brethren, I am constrained to register a very earnest dissent from the views above expressed. Their vigorous attack upon the inherent
fallacy of the obsolete doctrine of the divine right of kings,
321 and the scholarly narrative of the evolution of human thought resulting in the rejection of this fallacy by advanced and enlightened nations, are both entertaining and instructive; but I fail to see that they illuminate the subject under discussion. It is

freely conceded that the theory that the subject exists for the benefit of the sovereign is both "selfish" and "atrocious,"—it might be even more strongly characterized. I must insist, however, that this theory is not even remotely kin to the one that the right of self-preservation is inherent in the State, be it republican or monarchical in form, and that growing out of this right as a necessary incident thereto is the right to tax the citizens for the support of the government. "The right of taxation is a sovereign right inalienable, indestructible,—is the life of the State." I do not contend for the divine right of kings, but for the inherent, if not divine, right of the State (*i. e.*, the people) to protect and perpetuate itself. The right to tax cannot be abridged or restricted in any degree without the consent of the State, and that consent must be so plainly expressed as to leave no room for doubt. I dispute the theory announced by the majority that "the general rule is that where an individual would be barred by a statute of limitations the State is likewise barred under the same circumstances," and contend that the exception has been stated instead of the rule.

In my opinion, section 891 of the Political Code was designed to render tax executions dormant in the same manner that exe-
322 cutions issued on judgments become dormant. I agree with the contention of counsel for the State that the purpose of the statute is to protect innocent and *bona fide* purchasers. Stanley *v.* McWhorter, 78 Ga. 38; Hollis *v.* Lamb, 114 Ga. 744; Easterlin *v.* New Home Co. 115 Ga. 309. And I can conceive of no rule of construction by which there can be read into section 891 the meaning that unless a claim for taxes is placed in execution within seven years from the date of its accrual the State will, by analogy to the case of one who has obtained a civil judgment which has not been placed in execution, lose the right to issue a *fi. fa.* and enforce its collection. The argument that the construction of sections 890 and 891 for which I contend would place a premium on official inaction and allow the State to derive an advantage from the negligence of its taxing officers is to me entirely unconvincing. All presumptions are in favor of the faithful and efficient discharge of their duties by officers. On the other hand, the contrary construction will place a premium on concealment, deception, and taxdodging, which, in human experience if not in human nature, are evils more to be dreaded and more likely to be encountered than official inaction.

As has been seen, a majority of the court is of the opinion that the State's right to issue execution for taxes is barred after the lapse of seven years from the time when the right to issue such execution accrues. We are, however, unanimous in holding that the statute did not run against the State during the time that the
323 comptroller-general was enjoined by the Federal court from issuing any *fi. fa.* whatever for taxes on this stock. As will be seen from another portion of this opinion, the only question necessarily involved in the suit in the United States circuit court was the taxability of the stock for the year 1900; and to that extent only does the estoppel by judgment operate. But the decree in the case enjoined the issuance of any executions for taxes, not only for taxes

for the year 1900, but for subsequent years, and for any year in which the State might see fit to make a claim for taxes on the stock. While neither party is estopped on the question of taxability, except for the year 1900, the hands of the State officers were absolutely tied by the injunction as to the enforcement of any claim for taxes which the State might have. In this litigation the Georgia Railroad and Banking Company was a party; and while it was not a complainant, and did not itself procure the decree, it was a party to the case and was bound by the decree to the same extent that other parties would be bound, and was actually enjoined from returning or paying any taxes whatever on this stock. With the State officers in the situation in which the final decree left them, they would have been in contempt of court if they had attempted to enforce any claim for taxes against this stock in any way for any year. Under such circumstances the plaintiff in the present case cannot in equity ask that the State be barred by a limitation of time, when the time in-
324 volved is that which passed during the period when the State officers were bound to remain passive as a result of a judgment of a court of competent jurisdiction.

Mr. Justice Lumpkin concurs with me in the conclusion that I have reached, but, as will be seen, some of the reasoning leading thereto conflicts with the position taken by him in his dissenting headnote, 2 (*a*).

On the main issues of the taxability of the stock in question and the lebality of the procedure instituted by the comptroller-general, the court below was right; and therefore the judgment will be affirmed; direction being given, in accordance with the views of the majority, that the comptroller-general and the sheriff be enjoined from seeking to collect any tax on the stock from the plaintiff in error which accrued prior to the year 1895, and that the costs incurred in bringing the case to this court be taxed against the defendant in error.

Judgment affirmed with direction. All the Justices concur, except Candler, J., who dissents as to the direction given.

325 Clerk's Office, Supreme Court of Georgia.

ATLANTA, GA., *August* 11, 1906.

I hereby certify that the pages hereto attached contain the original writ of error and order allowing the same and original citation, and copies of petition for writ of error, bond, assignment of errors, bill of exceptions, transcript of record, and opinion and judgment of the Supreme Court of Georgia in the case therein stated, and also copies of the opinions of the said Supreme Court in a case between the same parties and in a case between the Georgia Railroad & Banking Company, plaintiff in error, and Wm. A. Wright, Comptroller-General of the State of Georgia, and John W. Nelms, Sheriff of Fulton County, defendants in error, said two opinions last mentioned being referred to in the opinion first above mentioned and herewith transmitted to the Supreme Court of the United States by authority of an

agreement of counsel; all of which appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

Endorsed on cover: File No. 20,345. Georgia supreme court. Term No. 380. The Central of Georgia Railway Company, plaintiff in error, *vs.* William A. Wright, Comptroller-General of Georgia, and John W. Nelms, Sheriff of Fulton County. Filed August 14, 1906. File No. 20,345.